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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-495

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL., *Petitioners,*

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

(Pastore, J.)

(January 9, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133802

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

The matter before the court presently is the demurrer of plaintiff to the plea in abatement of defendants to the substitute complaint of plaintiffs. In the substitute complaint, plaintiff pleads in two counts. In the first it seeks damages for claimed injuries sustained by it by alleged violence and misconduct of defendants engaged in during a strike at plaintiff's plants in East Hartford and Manchester in 1960. In the second count, it pleads that the allegedly offending acts mentioned in the previous count were engaged in by the defendants as a result of a conspiracy.

Defendants' plea in abatement is based upon three grounds. The first is that the filing of the substitute complaint (hereinafter referred to as the complaint) constitutes an unfair labor practice under § 8 of the National Labor Relations Act, as amended, 65 Stat. 601, 29 U.S.C.A. § 158. The gist of the second ground is that the scope of the allegations of the complaint comprehend not only a claim for damages for claimed illegal activity of defendants, but also for injuries necessarily resulting from concerted action of defendants which is protected by the Act

and as such pre-empted from state jurisdiction. The third ground is that the invocation of the "conspiracy doctrine" in the second count of the complaint constitutes an additional unfair labor practice.

By reference the exhibits attached to the plea in abatement to the original complaint are considered attached to and made part of the present plea in abatement to the substitute complaint. Furthermore, the court considers that such exhibit to the instant plea refers to the charge made by defendant Lodge 1746, I.A.M., instead of that of Lodge (Local) 743, I.A.M. By such exhibits the plea in abatement shows that on or about May 29, 1963, charges were made to the Regional Director of the N.L.R.B. in behalf of one or more of defendants alleging against plaintiff, in addition to charges already previously made, the bringing of the instant action for damages to be an unfair labor practice within the meaning of said § 8a()(1) and (3)(5) of said Act.

The demurrer of plaintiff to the plea in abatement is upon several grounds, as therein is more fully set forth.

From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been pre-empted by the National Labor Relations Act. *United Construction Workers* v. *Laburnum Corp.*, (1954) 347 U.S. 656; *United Auto Workers* v. *Russell*, (1958) 356 U.S. 634; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union*, (1959) 146 Conn. 93. As matter of law, the mere fact that the illegal conduct is also an unfair labor practice does not defeat the state jurisdiction. *United Construction Workers* v. *Laburnum*, supra, 660-661; *United Auto Workers* v. *Russell*, supra, 637; *Lavery's*

Main Street Grill, Inc. v. *Hotel Employees Union,* supra, 101-102.

In *Clyde Taylor Company,* 127 N.L.R. Board 103 (April 11, 1960) Taylor obtained an injunction in a state court banning peaceful picketing resorted to by the Union in protest against the discharge of employees, including a union steward. The state court had no jurisdiction to issue the injunction. Recognizing the right of all persons in good faith to protect their property and to litigate their claims in court, so long as the motivation was not a desire to defeat union organization of employees, a legitimate purpose of the Act, the National Labor Relations Board ordered dismissed the complaint which charged a violation of § 8(a)(1) of the Act for having obtained in a state court an injunction banning the picketing. Three members of the Board were of the opinion there had been no violation of said Section 8(a)(1) of the Act because of the good faith of Taylor in litigating his own rights; one member was of the opinion that there had been an unfair labor practice in obtaining the state injunction but that since it was not in bad faith and the motive was not to defeat union organization the complaint should be dismissed. It would appear from this Board ruling that the mere filing of the complaint in the present action for damages would not be considered as in violation of the Act.

Also since a demurrer does not admit conclusions, it does not admit that the filing of the complaint here is an unfair labor practice. *Smith* v. *Furness,* 117 Conn. 97, 99.

In defendants' memorandum of December 6, 1963, they request the court to take judicial notice of the claimed fact that the General Counsel of the N.L.R. Board has issued a complaint charging that plaintiff has committed an unfair labor practice by filing this damage suit. Granting that judicial notice may take the place of proof in proper circumstances, the court may not entertain such proof at the present time for the more fundamental reason that the

demurrer must be tested against the allegations to which it is directed including such proof as is properly admissible under them consistent with the rules of evidence. *Tomes* v. *Thompson,* 112 Conn. 190, 198; *Cashman* v. *Meriden Hospital,* 117 Conn. 585, 586; *O'Donnell* v. *Sargent & Company,* 69 Conn. 476.

If the proposition is granted that if such a complaint in behalf of the National Labor Relations Board has been issued, such assertion of jurisdiction by the Board would be sufficient to establish an "arguable" case in favor of initial Board jurisdiction (cf. *Marine Engineers* v. *Interlake Company,* 370 U.S. 173, 182, note 16 (1962)), it would be of no avail for there is no allegation of such fact in the plea in abatement to make it admissible. If it be assumed that such action of the N.L.R.B. General Counsel did not occur until after the filing of defendants' plea, it does not alter the situation as to its inadmissibility under present circumstances; its use must await further procedural avenues or remedies to make its interdictory effect felt.

It is difficult to understand why the fact that the scope of the averments of the complaint of plaintiff may be broad enough to include activities of defendants coming under the protection of the N.L.R.B. does or should operate automatically to pre-empt the power of the state court to adjudicate an action otherwise properly within its jurisdiction. The objection of defendants would seem more properly to present a question of the sufficiency of the stated cause of action, a matter not now before this court under the plea in abatement, and to present a problem of the admissibility of evidence on trial under appropriately framed issues.

Moreover, to concede the pre-emptive jurisdictional proposition of defendants, either because of the mere filing of plaintiff's complaint for damages, or because of the filing by defendants with the N.L.R. Board of charges against plaintiffs of committing an unfair labor practice in bringing the action, could lead to strange and unjust results.

It would be tantamount to allowing defendants, permanently or temporarily for an uncertain length of time, even beyond the limitations period perhaps, as has been stated, an immunity from liability for their tortious action gained at the expense of cutting off, or unduly delaying an injured party from his right to recover damages for his property, without recourse or compensation, to an extent which the United States Supreme Court has so far refused to decree, and which no declaration of congressional policy yet supports. *United Construction Workers* v. *Laburnum*, supra, 664; *United Auto Workers* v. *Russell*, supra, 646.

The third ground of abatement, connected with the second count, is that the invocation of the "conspiracy doctrine" constitutes an additional unfair labor practice. This claim is predicated on the fact that the allegations of the complaint in this respect also cover injuries to plaintiff necessarily resulting from activities protected under the Act. The averments of the complaint clearly direct the conspiracy claim to the claimed violence, mass picketing and other stated illegal conduct of defendants. There is no more reason for divesting the state court of jurisdiction which it has because of this dual aspect than there is in regard to the filing of the complaint.

The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of defendants.

An order may enter accordingly.

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

(Pastore, J.)

(January 9, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

The matter before the court presently is the demurrer of plaintiff to the plea in abatement of defendants to the substitute complaint of plaintiffs. In the substitute complaint, plaintiff pleads in two counts. In the first it seeks damages for claimed injuries sustained by it by alleged violence and misconduct of defendants engaged in during a strike at plaintiff's plants at Windsor Locks and Broad Brook, Connecticut, in 1960. In the second count, it pleads that the allegedly offending acts mentioned in the previous count were engaged in by the defendants as a result of a conspiracy.

Defendants' plea in abatement is based upon three grounds. The first is that the filing of the substitute complaint (hereinafter referred to as the complaint) constitutes an unfair labor practice under § 8 of the National Labor Relations Act, as amended, 65 Stat. 601, 29 U.S.C.A. § 158. The gist of the second ground is that the scope of the allegations of the complaint comprehend not only a claim for damages for claimed illegal activity of defendants, but also for injuries necessarily resulting from concerted action of defendants which is protected by the Act

and as such pre-empted from state jurisdiction. The third ground is that the invocation of the "conspiracy doctrine" in the second count of the complaint constitutes an additional unfair labor practice.

By attached exhibits the plea in abatement shows that on or about May 29, 1963, charges were made to the Regional Director of the N.L.R.B. in behalf of one or more of defendants alleging against plaintiff, in addition to charges already previously made, the bringing of the instant action for damages to be an unfair labor practice within the meaning of said § 8(a)(1) and (3)(5) of said Act.

The demurrer of plaintiff to the plea in abatement is upon several grounds, as therein is more fully set forth.

From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been pre-empted by the National Labor Relations Act. *United Construction Workers* v. *Laburnum Corp.*, (1954) 347 U.S. 656; *United Auto Workers* v. *Russell,* (1958) 356 U.S. 634; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union,* (1959) 146 Conn. 93. As matter of law, the mere fact that the illegal conduct is also an unfair labor practice does not defeat the state jurisdiction. *United Construction Workers* v. *Laburnum,* supra, 660-661; *United Auto Workers* v. *Russell,* supra, 637; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union,* supra, 101-102.

In *Clyde Taylor Company,* 127 N.L.R. Board 103 (April 11, 1960) Taylor obtained an injunction in a state court banning peaceful picketing resorted to by the Union in protest against the discharge of employees, including a union steward. The state court had no jurisdiction to issue

the injunction. Recognizing the right of all persons in good faith to protect their property and to litigate their claims in court, so long as the motivation was not a desire to defeat union organization of employees, a legitimate purpose of the Act, the National Labor Relations Board ordered dismissed the complaint which charged a violation of § 8(a)(1) of the Act for having obtained in a state court an injunction banning the picketing. Three members of the Board were of the opinion there had been no violation of said Section 8(a)(1) of the Act because of the good faith of Taylor in litigating his own rights; one member was of the opinion that there had been an unfair labor practice in obtaining the state injunction but that since it was not in bad faith and the motive was not to defeat union organization the complaint should be dismissed. It would appear from this Board ruling that the mere filing of the complaint in the present action for damages would not be considered as in violation of the Act.

Also since a demurrer does not admit conclusions, it does not admit that the filing of the complaint here is an unfair labor practice. *Smith* v. *Furness,* 117 Conn. 97, 99.

In defendants' memorandum of December 6, 1963, they request the court to take judicial notice of the claimed fact that the General Counsel of the N.L.R. Board has issued a complaint charging that plaintiff has committed an unfair labor practice by filing this damage suit. Granting that judicial notice may take the place of proof in proper circumstances, the court may not entertain such proof at the present time for the more fundamental reason that the demurrer must be tested against the allegations to which it is directed including such proof as is properly admissible under them consistent with the rules of evidence. *Tomes* v. *Thompson,* 112 Conn. 190, 198; *Cashman* v. *Meriden Hospital,* 117 Conn. 585, 586; *O'Donnell* v. *Sargent & Company,* 69 Conn. 476.

If the proposition is granted that if such a complaint in behalf of the National Labor Relations Board has been issued, such assertion of jurisdiction by the Board would be sufficient to establish an "arguable" case in favor of initial Board jurisdiction (cf. *Marine Engineers* v. *Interlake Company,* 370 U.S. 173, 182, note 16 (1962)), it would be of no avail for there is no allegation of such fact in the plea in abatement to make it admissible. If it be assumed that such action of the N.L.R.B. General Counsel did not occur until after the filing of defendants' plea, it does not alter the situation as to its inadmissibility under present circumstances; its use must await further procedural avenues or remedies to make its interdictory effect felt.

It is difficult to understand why the fact that the scope of the averments of the complaint of plaintiff may be broad enough to include activities of defendants coming under the protection of the N.L.R.B. does or should operate automatically to pre-empt the power of the state court to adjudicate an action otherwise properly within its jurisdiction. The objection of defendants would seem more properly to present a question of the sufficiency of the stated cause of action, a matter not now before this court under the plea in abatement, and to present a problem of the admissibility of evidence on trial under appropriately framed issues.

Moreover, to concede the pre-emptive jurisdictional proposition of defendants, either because of the mere filing of plaintiff's complaint for damages, or because of the filing by defendants with the N.L.R. Board of charges against plaintiffs of committing an unfair labor practice in bringing the action, could lead to strange and unjust results. It would be tantamount to allowing defendants, permanently or temporarily for an uncertain length of time, even beyond the limitations period perhaps, as has been stated, an immunity from liability for their tortious action

gained at the expense of cutting off, or unduly delaying an injured party from his right to recover damages for his property, without recourse or compensation, to an extent which the United States Supreme Court has so far refused to decree, and which no declaration of congressional policy yet supports. *United Construction Workers* v. *Laburnum,* supra, 664; *United Auto Workers* v. *Russell,* supra, 646.

The third ground of abatement, connected with the second count, is that the invocation of the "conspiracy doctrine" constitutes an additional unfair labor practice. This claim is predicated on the fact that the allegations of the complaint in this respect also cover injuries to plaintiff necessarily resulting from activities protected under the Act. The averments of the complaint clearly direct the conspiracy claim to the claimed violence, mass picketing and other stated illegal conduct of defendants. There is no more reason for divesting the state court of jurisdiction which it has because of this dual aspect than there is in regard to the filing of the complaint.

The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of defendants.

An order may enter accordingly.

Memorandum of Decision on Plaintiff's Demurrer to Defendants' Amended Plea in Abatement to Substituted Complaint

(House, J.)

(February 21, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

Memorandum of Decision on Plaintiff's Demurrer to Defendants' Amended Plea in Abatement to Substituted Complaint

These are companion cases in which the pleadings are identical in substance and except insofar as some factual allegations may differ in respects in no way affecting the questions of law raised by the pleadings pesently under consideration. Accordingly, but one Memorandum of Decision is being prepared to be filed in both cases.

The plaintiff's substituted complaint is in two counts. In brief, the first count alleges that the defendant unions engaged in a strike at the plaintiff's plants during which the unions and their members engaged in illegal and unlawful actions which constituted an unlawful interference

with the plaintiff's business and caused the plaintiff to incur expense for damage to property and to protect its lawful interests. The second count alleges that the alleged illegal acts specified in the first count were done in conspiracy with another union and others.

To this substituted complaint the defendants pleaded in abatement that the court lacked jurisdiction over the subject matter contained in the substituted complaint. The plaintiff filed a motion to erase the plea in abatement for want of jurisdiction over the subject matter of the plea and this motion was denied. Thereupon the plaintiff demurred to the defendants' plea in abatement on nine grounds and this demurrer to the plea in abatement was sustained on all grounds in a lengthy, well reasoned opinion by Pastore, J.

Subsequently the defendants filed an "Amended Plea in Abatement to Substituted Compaint" and to this pleading the plaintiff has demurred. The sufficiency of that demurrer is the present matter for determination by the court.

The amended plea in abatement to the substituted complaint, it is noted, is verbatim the same as the original plea in abatement to the substituted complaint except that whereas the original plea in abatement to the substituted complaint attempted to incorporate by reference an earlier plea in abatement filed June 3, 1963 by defendants to the original complaint together with exhibits attached thereto, the present amended plea in abatement to the substituted complaint not only recites that it incorporates by reference the entire June 3, 1963 original plea in abatement to the original complaint together with the exhibits thereto attached, but further and in addition incorporates by reference into the present plea as defendants' Exhibit 1 a copy of a "Motion for Leave to Withdraw Motion to Consolidate Cases and to further Amend Complaint dated August 13, 1963, and to File Substitute Motion together with Appendix attached thereto" dated August 30,

1963 and filed by Counsel for the General Counsel, National Labor Relations Board, First Region in Cases No. 1-CA-3355 et al before The National Labor Relations Board, First Region (which latter motion, incidentally, expressly incorporates by reference all the allegations of the original complaint which it seeks to amend and supplement but which has not been filed or made an exhibit in these proceedings).

In other words, the amended plea in abatement to the substituted complaint which is the subject of the present demurrer purports to incorporate by reference within its allegations not only (a) an earlier superseded plea in abatement with the exhibits attached thereto, but (b) a motion to amend a complaint filed in a proceeding before the National Labor Relations Board which, in turn, (c) incorporates by reference all the allegations of the original complaint in that proceeding—which original complaint is neither attached nor filed nor made an exhibit.

The result is, obviously, confusion worse confounded! It is difficult to find any part of the defendants' pleading which follows the most elemental rules of Connecticut Practice and Procedure. In fact, even to file the present amended plea in abatement without the consent of the plaintiff or after a motion for leave to file it had been filed and granted by this court was improper pleading. Practice Book, Sec. 132. See *Mitchell* v. *Smith,* 74 Conn. 125; *Brockett* v. *Fair Haven & W. R. Co. et al,* 73 Conn. 428; Hazel Cole's Appeal from Probate, 18 Conn. Sup. 167, 168.

"Rules of pleading are not made for the purpose of tripping up the unknowing or unwary. They are designed to clarify and fix the issues and to confine the judicial inquiry necessary to decide the issues within reasonable and relevant limits. . . ." *Salem Park, Inc.* v. *Salem,* 149 Conn. 141, 144. "Pleadings have their place in our system of jurisprudence. While they are not held to the strict and artificial standard that once prevailed, we still

cling to the belief, even in these iconoclastic days, that no orderly administration of justice is possible without them." *Malone* v. *Steinberg*, 138 Conn. 718, 721. "Pleadings should be direct, precise and specific . . . The court should not have to mathematically dissert the pleadings in order to understand them. The forms of pleadings and the rules governing their use are to be found in the Practice Book. Since 1879 it has served its purpose, occasional changes being adopted as the need is demonstrated . . . Innovations should not be put into practice ex parte by counsel." *Vigue* v. *John Hancock Mutual Life Ins. Co.*, 147 Conn. 305, 306.

Even without its attempted incorporation by reference of undisclosed matter incorporated by reference, the present plea in abatement to the substituted complaint utterly and completely fails to comply with the basic and first requirement of pleading in this jurisdiction. This is set out in Sec. 70 of the Practice Book and Sec. 52-98 of the General Statutes:

> "Each pleading shall contain a plan and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation."

The defendants' present amended plea in abatement to the substituted complaint is anything but "a plain and concise statement of the material facts on which the pleader relies." It improperly attempts to incorporate within it evidence by which the material facts are sought to be proved. It is not "divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation." In fact, it does not appear that there has even been an attempt by the defendants to comply with Sec. 70 of the Practice Book and Sec. 52-98 of the General Statutes.

Nor is the court powerless to compel compliance with the basic rules for proper pleading when there is such a gross disregard for them. Section 52-119 of the General Statutes expressly provides "Parties failing to plead according to the rules and orders of the court may be nonsuited or defaulted, as the case may be."

However, rather than attack the gross deficiencies of the defendants' plea, the plaintiff has demurred to it, thus presenting the question as to whether this amended plea in abatement has cured the insufficiencies of the prior plea as to which this court by Pastore, J. sustained plaintiff's demurrer. "Under these circumstances the court, in the interest of economy of judicial procedure, although rather against its better judgment, has decided to take the case as presented by the parties." *Swainbank* v. *Coombs,* 19 Conn. Sup. 391, 394.

As already noted, the only change in the present amended plea in abatement from the prior plea as to which the plaintiff's demurrer was sustained is in the additional language in the first and second paragraphs of the amended plea which incorporates into the plea as defendants' Exhibit 1 a document entitled "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint, dated August 13, 1963, and to File Substitute Motion together with Appendix A attached thereto." So the narrow issue now before the court is whether this added allegation cures the defects for which this court has already sustained a demurrer.

Before a consideration of the merits of this issue are discussed two matters should be noted:

a) the defendants did not comply with the requirements of Sec. 91, paragraph 2 of the Practice Book with respect to serving and filing the Exhibit 1 referred to in the amended plea in abatement which, instead of being served and filed, was marked as an Exhibit for Identification.

b) Exhibit 1 referred to in the plea (marked as Exhibit 1 for identification at the hearing) is not a complete document in that it is entitled "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint, dated August 13, 1963, and to File Substitute Motion together with Appendix A attached thereto." Attached to this motion in the exhibit is a form entitled "First Amended Charge Against Employer" dated June 10, 1963 which states that "The charging party re-alleges and incorporates herein by reference all allegations of the original charge (initially filed as Fourteenth Amended Charge)." There is also attached a form entitled "Charge Against Employer" dated June 6, 1963 which states that "The charging party hereby realleges and incorporates herein by reference all allegations of the Thirteenth Amended Charge filed April 15, 1963."

Nowhere on the exhibit does it appear, nor has it been alleged or shown, whether or not the "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint dated August 13, 1963" was granted or denied, nor does it anywhere appear nor has it been alleged or shown whether or not the "Motion to File Substitute Motion Together with Appendix A attached thereto" has been granted or denied. Nor has this court been in any way apprised of what was purportedly "re-alleged" and incorporated by reference in the "Charges against Employer" stated in Exhibit 1.

This court can hardly be expected to evaluate the effect of a document, the contents of which are not disclosed, or of a copy of motions filed in another matter when it has no knowledge whether the motions were granted or denied!

In addition, it does not appear that the pleading of the Exhibit 1 cures the defects in the amended plea in abatement as noted by this court in sustaining the demurrer to the original plea in abatement. The defendants' failure adequately to plead over after the sustaining of the de-

murrer leaves this court with no other course than to render judgment for the plaintiff on the present demurrer which is on the same grounds as that previously sustained. *Leger* v. *Kelley*, 142 Conn. 585, 587; *Cashman* v. *Meriden Hospital*, 117 Conn. 585, 589.

The only possible relevancy of the only added allegation with regard to Exhibit 1 referred to in the present plea is with respect to the allegation that plaintiff's action in filing the complaint in this action was an unfair labor practice. That same allegation was made in the original plea in abatement and this court by Pastore, J. sustained the demurrer addressed to it. The concluding language of his Memorandum of Decision dated January 8, 1964 is clear and precise:

> "The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of the defendants."

There is no need to quote further from Judge Pastore's Memorandum of Decision or re-cite the authorities therein cited. It must be held that the defendants' amended plea in abatement does not cure the insufficiencies for which the demurrer to the original plea in abatement was sustained. Accordingly, for the reasons hereinbefore noted and those set forth in the January 8, 1964 Memorandum of Decision of Judge Pastore, the demurer to the amended plea in abatement to the substituted complaint is sustained.

Memorandum Re Defendants' Demurrer to the Relief Sought

(Cotter, J.)

(March 25, 1965)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

In case No. 133884 by virtue of a more specific statement the plaintiff claims damages of $8,710,193.00 and in case No. 133885 in the same manner claims damages of $4,034,070.00.

The plaintiff United Aircraft Corporation seeks to recover damages by reason of acts of violence and misconduct engaged in by the defendant unions during a strike at plaintiff's plants from June 8, 1960 to August 11, 1960. The following has taken place in the case so far: two pleas in abatement claiming that this Court lacked jurisdiction

over the subject matter of the actions were sustained; two motions to stay proceedings were denied; and an action seeking an injunction against the plaintiff in the Federal District Court was denied. *International Association of Machinists* v. *United Aircraft Corporation*, 56 LRRM 2389, 49 CCH Labor Cases P 18,959 (D. Conn. 1964); aff'd, 333 F.2d 367 (2nd Cir. 1964); cert. denied, 379 U.S. 946 (1964).

A motion for more specific statement dated May 7, 1964, seeking in paragraph 8 a more specific statement of plaintiff's claimed damages was granted as modified by Judge Dube and the plaintiff filed its more specific statement on November 13, 1964. The defendants now demur to the relief sought. Reference is apparently made to the plaintiff's substituted complaint dated and filed June 4, 1963, and this memorandum concerns the demurrer as referring to the substituted complaint.

Paragraphs 9, 10, 11, 12 and 14 of the first and second counts of its substituted complaint claim tortious acts during the strike and in paragraph 17 of the first count and paragraph 19 of the second count the plaintiff apparently claims damages by virtue of these acts.

Judge Pastore on January 8, 1964 remarked, in part, in an opinion on this question as follows: "From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been preempted by the National Labor Relations Act."

The defendants filed an amended plea in abatement dated January 11, 1964, realleging that plaintiff seeks damages not only for defendants' tortious acts but also for protected strike activities. Judge House, in his memorandum of de-

cision dated February 21, 1964 sustaining the demurrer, quoted Judge Pastore and based his decision in part on the reasons in Judge Pastore's memorandum.

Since the only pleading concerning the matter of damages is plaintiff's more specific statement dated November 12, 1964, filed in compliance with defendants' motion dated May 7, 1964. Paragraph 8 of defendants' motion sought to have paragraph 17 of the first count of plaintiff's substituted complaint and paragraph 19 of the second count made more specific concerning plaintiff's damages. Paragraph 8 of the motion was modified by Judge Dube to require the plaintiff to furnish "an accountant's breakdown, an accountant's report as to what you intend to go after."

Paragraph 8 of plaintiff's more specific statement is an accountant's report, as ordered, and makes more specific paragraph 17 of the first count of plaintiff's substituted complaint and paragraph 19 of the second count, which seem to be plaintiff's claimed injuries resulting from the so-called tortious acts, alleged in paragraphs 9, 10, 11, 12 and 14 of the substituted complaint. The plaintiff can only claim damages for tortious acts, as Judge Pastore and Judge House decided.

The plaintiff admits it cannot recover damages for losses caused by protected strike activities and agreed in oral argument that it claims damages only for illegal conduct.

Clearly, at the time of trial, the plaintiff can only introduce evidence to show illegal and tortious conduct so that the defendant can in no way be harmed.

The extent of state court jurisdiction in a common law tort action arising out of a labor dispute has been clearly defined by the Supreme Court of the United States.

Peaceful activity is not subject to state decree or regulation either by an award of damages or by injunctive relief.

The jurisdiction left in the state courts relative to granting damages exists in cases where violent torts are involved. Federal law requires that relief in the form of monetary damages must be restricted to the results of alleged violent torts. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 43 LRRM 2838. Damages, of course must be separated and apart from economic losses resulting from lawful conduct during a legal strike because the state courts do not have jurisdiction to award damages which might be due to lawful and legal activities. *Local 20 Teamsters* v. *Morton*, 377 U.S. 252, 56 LRRM 2225.

A demurrer to the relief sought raises the question of the kind of relief sought, such as injunction, declaratory judgment, and damages, not whether a particular element of damages is compensable. *Seidler* v. *Burns*, 84 Conn. 111, 113 (1911); *Urban* v. *Hartford Gas Co.*, 139 Conn. 301, 304 (1952); *Wexler Construction Co.* v. *Housing Authority of Norwich*, 144 Conn. 187, 192 (1956).

The defendants' demurrer to the relief sought seems to claim that an alleged element of plaintiff's damage claim is not compensable.

Defendants' demurrer to the relief sought is overruled.

Memorandum of Decision on Plaintiff's Demurrer to Defendants' First, Second, Third, Sixth and Seventh Special Defenses to First and Second Counts of Substituted Complaint

(Parskey, J.)

(March 14, 1966)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

In their first, second and third special defenses to both counts the defendants raise again the jurisdictional issue of federal pre-emption, this time as a special defense under the authority of *McNish* v. *American Brass Co.*, 1952, 139 Conn. 44, 50. The first special defense alleges that the in-

stitution of the present actions constitutes arguably an unfair labor practice in violation of Section 8(a) (1) of the Labor Management Relations Act, 1947 (the Taft Hartley Act). The second special defense alleges that the relief which the plaintiff seeks covers all strike losses without differentiating losses resulting from peaceful primary strike activity protected by the Taft Hartley Act and losses resulting from tortious misconduct and because of the inclusion of arguably protected activity the pre-emption doctrine applies. The third special defense claims that the plaintiff by invoking the conspiracy violates rights protected by Section 7 of the Taft Hartley Act and therefore this court lacks jurisdiction of the subject matter.

The three jurisdictional claims of the defendants' palimpsest, now included by way of special defense, have already been passed upon by the court. The claims in the first and third special defenses were considered by Pastore J. in his memorandum on the defendants' plea in abatement. The jurisdictional claim in the second special defense was considered by Cotter J. with respect to the defendants' demurrer to the relief sought. No new arguments have been advanced which would persuade the court to change its opinion merely because the claims are now clothed in a different garment. With reference to the second special defense it may well be that the plaintiff's actions are merely a disguised effort to compel the defendants to compensate the plaintiff for its strike losses; if this turns out to be the case the court lacks neither the discernment nor the authority to deal with this matter appropriately at the trial. However, the court cannot assume this to be the case at this stage of the proceedings.

In their sixth special defense the defendants make the tridentated claim of waiver, estoppel and laches. The claim of laches, while applicable to suits in equity, does not apply to actions at law. *Weil* v. *Poulsen,* 1936, 121 Conn. 281, 289. With respect to waiver and estoppel the issue is not as

simple as formulated by the plaintiff. "'Waiver' is a vague term used for a great variety of purposes, good and bad, in the law. In any normal sense, however, it cannotes some kind of voluntary knowing relinquishment of a right". *Green* v. *United States*, 1957, 355 U.S. 184, 191. Whether there is an intent to waive is a question of fact. *Chatfield Co.* v. *O'Neill*, 1915, 89 Conn. 172, 175; *O'Loughlin* v. *Poli*, 1909, 82 Conn. 427, 436. It need not be express; it may be implied. *Lee* v. *Casualty Co.*, 1916, 90 Conn. 202, 206. Indeed, when the intent to waive, though not expressly found, is yet the necessary inference from the facts found, the intent may be inferred as a matter of law. *Grippo* v. *Davis*, 1918, 92 Conn. 693, 696. The allegations of this defense are sufficient to warrant the inference of waiver and therefore can be considered even in the absence of an express allegation. *Phoenix Mutual Life Insurance Co.* v. *Brenckman*, 1961, 148 Conn. 391, 395. As for estoppel, although it is generally stated that in order for the doctrine to apply the party must do or say something intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief and the other party influenced thereby must actually change his position or do some act to his injury which he otherwise would not have done, *Pet Car Products, Inc.* v. *Barnett*, 1962, 150 Conn. 42, 53, it should not be overlooked that "the principal of estoppel . . . has its foundation in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, secure those ends. Like the Statute of Limitations, it is a conservator, and without it society could not well go on". *Daniels* v. *Tierney*, 1880, 102 U.S. 415, 420. The present action must be examined in the context of the strike which spawned it and the injunction which preceded it. The question presented here is whether when the plaintiff sought an injunction against certain tortious conduct and when there-

after the parties entered into a certain stipulation with respect to the issuance of such injunction without a reservation of right to pursue an action for damages, the plaintiff has elected its course of action and is therefore estopped to pursue its claim for damages. It is clear that a party may claim damages in an injunction proceeding. *Roy* v. *Moore*, 1912, 85 Conn. 159, 161. Furthermore, a court of equity which has obtained jurisdiction of a controversy will retain jurisdiction for the purpose of administering complete relief in furtherance of justice concerning the subject matter. *Clipfel* v. *Kantrowitz*, 1956, 143 Conn. 184, 188. Since he who seeks equity must do equity the question may well be whether under the circumstances surrounding the labor dispute between the parties the court will permit the plaintiff to seek an injunction while at the same time holding in reserve its power play for damages. Without a full plenary hearing of all the circumstances surrounding the injunction and the stipulation entered into in connection therewith the court cannot hold as a matter of law that this defense is invalid.

The seventh special defense raises the defense of the one year statute of limitations under Section 52-584 of the General Statutes. It is the plaintiff's claim that the case at bar is governed by the three year statute. Section 52-577. The plaintiff's argument is two-fold; (1) that it is not seeking damages for injuries to real or personal property, (2) it is not seeking damages based on reckless or wanton misconduct. Since the second ground is dispositive of the present matter there is no need to consider the first ground; consideration of the first ground is best left to another day. As for the latter ground both counts of the substituted complaint claim damages flowing from intentional acts, not from reckless or wanton misconduct. Such acts are not covered by Section 52-584 which is limited to acts of neligence or of reckless and wanton misconduct. The intentional tort is governed by Section 52-577. *City of Milford* v. *Swarbrick*, 1963, 24 Conn. Sup. 320, 323.

Although the defendants have filed the same special defenses to the second count as to the first, the plaintiff's demurrer in this regard invites the Court to examine the whole record and to give judgment for the party who, on the whole, appears to be entitled to it. *White* v. *Avery*, 1908, 81 Conn. 325, 328; Stephenson, Conn. Civ. Proc. § 94e. Examining the second court of the substituted complaint in the light of these considerations it is apparent that this count alleges a cause of action for civil conspiracy. Our courts do not recognize an independent cause of action for conspiracy. *Benoit* v. *Amalgamated Local 299*, 1963, 150 Conn. 266, 276; *Wyeman* v. *Deady*, 1906, 79 Conn. 414, 417; *Austin* v. *Barrows*, 1874, 41 Conn. 287, 300. Thus the plaintiff gains nothing by repeating the allegations of the first count under a conspiracy label.

Accordingly the demurrer to the first, second, third and seventh special defenses to the first count is sustained, demurrer to the sixth special defense is overruled. The demurrer to the special defenses to the second count is overruled.

Memorandum of Decision on Plaintiff's Motion for Rehearing of Demurrer to First, Second, Third and Seventh Special Defenses to Second Count of Substituted Complaint

(Parskey, J.)

(March 31, 1966)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 143885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

The Court has re-examined the second count of the complaint in the light of the arguments advanced by the plaintiff in the present motion.

While it is true, as the plaintiff claims, that generally an action does lie for damage resulting from tortious acts done pursuant to a conspiracy, *Williams* v. *Maislen,* 1933, 116

Conn. 433, 437, Section 31-114 of the General Statutes virtually eliminates this type of action in labor disputes. The plaintiff correctly points out that in a civil conspiracy a defendant co-conspirator is liable in damages for injury from acts of a co-conspirator pursuant to the conspiracy, *Ashmead* v. *Colby*, 1857, 26 Conn. 287, 314, but this is precisely what Section 31-114 prohibits. In *Benoit* v. *Amalgamated Local 299*, 1963, 150 Conn. 266, 274 our Supreme Court noted the similarity between Section 31-114 and Section 6 of the Norris-LaGuardia Act 47 Stat. 70 and further accepted the federal construction as announced in *United Brotherhood of Carpenters and Joiners* v. *United States*, 1946, 330 U.S. 395, 406, as applicable to our statute. In *United Brotherhood* at page 404, it is made abundantly clear that under Section 6 participants in a conspiracy are protected against liability for the unauthorized illegal acts of other participants in the conspiracy. Since this is the very heart of the civil conspiracy, once it is eliminated nothing of substance remains. While it is true that participants in a conspiracy are not immunized from responsibility for authorized acts in furtherance of a conspiracy, the plaintiff has already alleged in its first count tortious conduct authorized, ratified and participated in by the defendants; in view of the limitations of Section 31-114 repeating these allegations in the second count under a conspiracy label adds nothing.

Plaintiff's motion for rehearing is denied.

Memorandum of Decision

(Gaffney, J.)

(June 3, 1968)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

By agreement of counsel both of the above-numbered cases were tried together. The issues in each were identical. Each complaint was drafted in two counts. Case No. 133884 was brought by the United Aircraft Corporation against the International Association of Machinists: Aeronautical Industrial District Lodge #91, International Association of Machinists: Industrial Aircraft Lodge #1746 of the International Association of Machinists. In case No. 133885 the United Aircraft brought suit against the same defendants with Local #743, International Association of Ma-

chinists being sued in place of Local #1746. Local Lodge #1746 was the lodge covering the aircraft plants at East Hartford and Manchester. Local Lodge #743 was the lodge operating at the Hamilton Standard Division of the plaintiff corporation located in Windsor Locks and Broad Brook, Connecticut. The plaintiff is a Deleware corporation with offices in East Hartford. The defendant International Association of Machinists is an unincorporated association, doing business, acting or carrying out its functions in this State. The defendant Aeronautical Industrial District Lodge #91, International Association of Machinists is an unincorporated voluntary association which had an office and place of business in East Hartford, during periods relevant to this action. The defendants, Local Lodges #1746 and #743 are and were unincorporated voluntary associations which had their offices in East Hartford during periods relevant to these actions. A collective bargaining agreement entered into between the plaintiff, hereinafter referred to as "Aircraft" and Lodge #1746 which had been entered into December 5, 1957, expired December 4, 1960. This agreement covered at the East Hartford Plant approximately 16,850 production and maintenance employees. The agreement between Aircraft and Lodge #743 entered into April 18, 1958, expired April 21, 1960. This agreement covered approximately 7,000 production and maintenance employees. Negotiations to effectuate new agreements between the parties were unsuccessful and a strike was called on June 8, 1960 against the Aircraft at both the East Hartford and Manchester divisions and the Windsor Locks and Broad Brook divisions. Aircraft alleges in the first count in each complaint that between June 8, 1960 and June 13, 1960 the defendants, by reason of a great many enumerated torts committed on the picket lines, unlawfully interfered with its business, as a result of which it was forced to expend large sums of money in increased costs of production; it was prevented from earning profits reasonably to be anticipated; it was prevented

from meeting its contractual obligations; it incurred expense for damage to property of its employees and others, and it was caused to spend substantial sums of money to protect its lawful interests. (This last claim was later abandoned after motion made by the defendants.)

The claimed torts included mass congregation of pickets on the sidewalks behaving in an unruly manner, mass picketing, circular picketing, close formation and shoulder-to-shoulder picketing, malicious and wilful blocking of ingress and egress to Aircraft's premises, the denying of access to Aircraft's premises to its officers, employees, deliverymen, and others desiring to enter and leave the premises for the purpose of conducting lawful business with Aircraft. The use of vile, obscene, abusive, vicious and threatening language and gestures directed by the pickets at these same officers, employees, suppliers, and members of the public entering, leaving or attempting to enter or leave Aircraft's premises is further alleged. These acts were claimed to have been undertaken in an attempt to coerce and intimidate these officers, employees and suppliers from entering or leaving Aircraft's premises. Damage and injury to Aircraft's officers and employees, suppliers and members of the public resulting therefrom are charged. It is further alleged that acts and threats of violence were directed against these same officers, employees and agents of Aircraft.

Aircraft on June 13, 1960 sought a Show Cause Order in Superior Court for Hartford County, asking why an injunction should not issue, restraining the defendants from the alleged tortious acts complained of. On this date a stipulation was entered into between the parties, approved by the Court (Klau, J.) wherein the defendants in each case agreed to wholly and absolutely desist from mass picketing, shoulder-to-shoulder picketing and close formation picketing conducted in such a way as to block ingress and egress at the entrances to the Aircraft's plants. The defendants

further stipulated that their members would refrain from "preventing or interfering by force, violence or intimidation", or "the deposit of nails or other sharp objects on the roadway, or the threat of force or violence to the entrance or egress from said plant of the plaintiff's officers, employees or members of the public". The defendants agreed to limit the number of its pickets at the entrances and to space the distance between its pickets.

The Aircraft claims that subsequent to the approval by the court of the stipulation, and the filing of it in court, the defendants, their officers, agents and members, continued to engage in the tortious acts and activities above described in violation of the stipulation, and that this course of conduct was carried on until the strike was settled on August 11, 1960.

In a second count in each of the two cases, the plaintiff claimed that the tortious and illegal acts alleged in the first count were done in pursuance of a conspiracy.

Compensatory damages in the sum of $10,000,000 are sought by Aircraft in suit No. 133884 against the International, the District Lodge #91, and Local Lodge #1746. Compensatory damages of $5,000,000 are sought by Aircraft in suit No. 133885, against the International, the District Lodge #91 and Local Lodge #743, in Windsor and Broad Brook. Additionally, in each case exemplary damages are sought in such sum as the court finds appropriate.

At the start of the trial counsel agreed and defendants' counsel moved that the issues on liability and damages be separated, and that the plaintiff would first proceed on the issue of liability. This motion was granted. The case was then tried to the court on the issue of liability alone, with an understanding between the parties that if after a full hearing, liability was found to rest upon the defendants, a later hearing in damages would be held.

Early in the trial the court ruled, after objection was made, that it would not hear evidence in support of the

conspiracy count. It ruled that, accurately speaking, there is no civil action of conspiracy under our law, but that such an action is an action for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself. See *Cole* v. *Associated Construction Co.*, 141 Conn. 49, 54; *Benoit* v. *Amalgamated, Local No. 299*, 150 Conn. 266, 276.

In each of the instant cases damages were not sought under the conspiracy count. This count, the plaintiff admitted, was designed to be used as a vehicle in each case to introduce evidence to support its claim for damages sought in the first count.

The defendants answered the complaint with admissions of certain paragraphs, including the claimed status of the defendants, and denials of other paragraphs. Additionally, they pleaded several special defenses. Chief reliance is placed on special defenses numbered 4 and 5. In substance these defenses allege that the defendants at no time ever authorized, ratified, or participated in any of the tortious acts set out in the complaint and consequently under the prohibitions of § 31-114 of our General Statutes they were not liable. A sixth special defense claims estoppel and waiver on the part of the Aircraft for its failure to apply to the Superior Court for a restraining order to stop the violations by the defendants of the terms of the stipulation agreed upon and approved by the court on June 15, 1960. This defense was not considered at the trial, since the court felt it pertained primarily to the question of damages.

During a late stage in the trial the defendants advanced a rather novel defense. After evidence had been introduced to show that they incited the mass and illegal picketing leading to the consequential acts of violence, they sought to escape the responsibility for their tortious acts, on the claim that conditions got so far out of hand on the picket lines that their officers and agents in charge were

unable to control the situation, and so should be excused from bearing any burden of guilt.

Although the complaints and answers in these cases are the same, it is necessary to consider each case separately because of the different nature of the overt acts proven in each case.

First consideration is given to the facts proven in case No. 133884, the Aircraft against Internat[illegible]al, District Lodge #91, and Local Lodge #1746.

Local Lodge #1746 encompassed a bargaining unit of approximately 16,000 hourly employees at the plaintiff's East Hartford plant. Its elected officers at the time of the strike were President Fraser, Vice President Stewart, Treasurer Harlow, Recording Secretary Kohler and Financial Secretary Danahy. In the plant there were elected shop stewards and shop committeemen, each of whom had specific duties to perform during grievance procedures. District #91 was an organization composed of local lodges of the International Association of Machinists and was immediately over the local lodges, being the constitutional administrative arm of the International. Delegates were elected to it by each local lodge of the district. They in turn elected district officers who administered the affairs of the district. District #91 was comprised of Lodges #1746 at East Hartford and #743 at Windsor Locks. The District exists under the constitution of the Grand Lodge, which is also known as the International. Both the local lodges and the district are affiliated with the International. The salaries of the representatives of the district were paid partially by the district and partially by the International or Grand Lodge. The senior business representatives of district #91 in 1960 was John R. Main. Other representatives at that time were George Cope representing Lodge #1746, and John R. Sullivan representing Lodge #743 at Hamilton Standard.

In 1960 Raymond Jutras, an International representative, was an official of district #91 acting as an organizer, being paid partially by the International, and in part by district #91.

Richard Thurer, a representative and agent of the International was assigned in 1960 as the I.A.M. representative to the plaintiff's plant. He was paid solely by the International.

The strike at the plaintiff's East Hartford plant began at 9:00 A.M. on June 8, 1960. Sanctions had originally been granted by the International to begin the strike on June 13 but Department #961 at East Hartford walked out prematurely June 8. The vice president of the International in charge of the New England region, Fred Coonley, immediately sent a telegram to local lodges #1746 and #743 granting sanctions retroactively as of 8:00 A.M. that morning. Later in the morning a mass meeting was held at Union Hall on Main Street in East Hartford. Portions of the events that transpired at this meeting were sound film recorded by W.T.I.C., a Hartford Radio and Television station. The meeting was addressed by Raymond Jutras, the International organizer. He read a telegram which had been sent to John Main, the business representative of district #91, by Fred H. Coonley, vice president of the International. It officially advised that strike sanctions were released to lodges #1746 and #743 as of 8:00 A.M. June 8, 1960. Jutras spoke as follows:

> "VOICE: Now it becomes our job to try to keep as many of the second shift employees from going into that plant as we possibly can and that can only be done by mass picketing. But, listen, Brothers and Sisters, we have been waiting for fifteen years for this. This company has shoved a substandard contract down our throats because they kept us divided. They have demonstrated it today that we will not go back to work until we have the kind of a contract that

we need with United Aircraft. If the officers gave you a hard time, don't argue with the officers. If they tell you to move over here or move over there, do so. Report the incident to us and it will be our responsibility to take it up with the East Hartford Police Department. Remember one thing, the cop has the last say. Don't argue with them. We don't want to see you boys wind up in the jug, but let me assure you of this, if you wind up in the jug, we'll get you out as fast as they bring you in, believe me."

During the following days and until the entry of a stipulation regulating activity on the picket lines, approved by the court on June 13, 1960, the strikers resorted to every kind of illegal picketing. Films taken by the plaintiff at each gate of its plant, show the pickets adopting extreme measures designed to halt all ingress and egress to the plaintiff's plant. Picketers by the hundreds marched in circular formation shoulder to shoulder. Cars trying to enter the plant were blocked off by masses of pickets. Police forcibly pushed picketers aside to open passageways for cars and trucks entering the premises. Drivers and occupants of cars were subjected to a variety of contemptuous gestures. Employees were physically attacked. Profanities and obscenities were shouted along with threats of physical harm. Strikers ostentatiously noted license numbers and occupants of the cars entering and leaving the plant and other strikers took pictures of the cars and occupants, all in an attempt to intimidate workers. Mirrors and radio antennas were torn off cars. The shoving, kicking, pushing and slapping of cars was commonplace. Hundreds of cars turned back. Law enforcement officers, both state and local, were shoved against and on the hoods of the cars. Traffic as a result was snarled and backed up for blocks. Numerous arrests were made. Nails, tacks and other sharp objects were strewn on the highway approaches. The general counsel of the International, Plato Papps, who had been summoned to Hartford the first week of the strike,

and who later testified in this trial as a defense witness, characterized the scene in his testimony after having viewed the movies taken by the plaintiff as follows:

> "Q. Now, tell his Honor what did you see in those movies?
>
> "A. A lot of mass picketing. I saw cars being rocked. I don't recall now whether I saw anybody get struck, your Honor, but there was a very wild, unruly mob, mass picketing. I think that's the vest way I can explain it. I think I commented at that time it looked like 'Ben Hur' in modern dress or in modern cars. That's about the sum and substance of it.
>
> Q. All right. Now, following the showing to you of those movies, what if anything did you do next?
>
> A. I looked at the movies. I knew there was going ot be an injunction the next day. I told Joe, I said—Joe Wells, that is—I said, 'Joe, I'm not going to let any court in the country see these movies.' I said, 'I'll take a consent judgment before I do that."

He further testified as follows concerning the picketing that he saw:

> "Q. Now, tell his Honor, if you will, something of the procedure that was followed in the courthouse the next day when—were you in court when the case was called having to do with the application for injunction?
>
> A. Oh, yes. I think Mr. Zeman—no, there was a Mr. Apter, Marvin Apter, who was representing Lodge 1746 at that time and Mr. Zeman was counsel for 743.
>
> Q. All right.
>
> A. If my memory is correct, and I told them what I had seen, the motion pictures. I said, 'I'm not going to permit any Court to see these pictures.' As far as I was concerned, any judge that saw them would issue an injunction immediately. I then talked to Mr. Wells. I was permitted—I think I said in open court—I believe I was permitted to—I was introduced to the

Court. I think we met in chambers, Judge Klau, if my memory is correct. I explained to the judge that we didn't condone this. That as far as I was concerned it was illegal activity, and that I was perfectly willing to enter into a stipulation and was quite concerned frankly with people who might be arrested, and I would—with the consent of Mr. Wells we agreed to a stipulation."

Every concept of peaceful and legal picketing was violated. In the case of *Levy & Devaney, Inc.* v. *International Pocketbook Workers Union,* 114 Conn. 319, at 322 the court held as follows:

"To intimidate is to inspire with fear, to overawe or make afraid. Fear may be inspired without physical violence or spoken threats, moral intimidation may be accomplished by a menacing attitude and a display of force which may coerce the will as effectually as actual physical violence. The gathering of strikers in considerable numbers at the entrance of a factory with threatening attitude toward employees, who must run the gauntlet of a hostile picket line in going to and from work, may overawe and make them afraid by a show of force which itself is intimidating. The well considered authorities all hold that the conduct of a strike may be such as to constitute intimidation though there is no use of force or physical violence. *State* v. *Stockford,* 77 Conn. 227, 237, 58 Atl. 769; *Vegelahn* v. *Gunter,* 167 Mass. 92, 44 N.E. 1077; *Jefferson & Indiana Coal Co.* v. *Marks,* 287 Pa. 171, 134 Atl. 430; *Pierce* v. *Stablemen's Union,* 156 Cal. 70, 103 Pac. 324; *Keuffel & Esser* v. *International Assoc. of Machinists,* 93 N.J. Eq. 429, 116 Atl. 9; *Bomes* v. *Providence Local No. 223,* 51 R.I. 499, 155 Atl. 581; *Truax* v. *Corrigan,* 257 U.S. 312, 42 Sup. Ct. 124; 7 Labatt's Master & Servant, (2d Ed.) § 2706; 1 Eddy on Combinations, § 538; Cogley on Strikes & Lockouts, 292; 32 C.J. pp. 166, 182."

Judge Devlin in his comprehensive and studied opinion on picketing in *Turner & Seymour Mfg. Co.* v. *Torrington Foundry Workers Local 1699,* 18 Conn. Supp. 73 (1952) contrasted legal and illegal activities in the picket lines as follows:

> "In the furtherance of a lawful strike the strikers may use peaceful persuasion to induce other workmen to join them in the strike. Restatement, 4 Torts § 779, comment f, has tabulated some of the several functions performed by picketing in the following language: 'Pickets stationed at the place of business involved in the dispute may observe it to see the extent of operations and the persons who come there for business. They may also, by word of mouth, or signs or placards, seek to dissuade workers and others from entering the plant for purposes of business or from otherwise doing business with the employer. Their mere presence at the plant may be sufficient notice to persons interested that the plant is involved in a labor dispute. Picketing may also be a means of maintaining the morale of the workers involved in the dispute, and of exhibiting to others their unity and determination. Rumors that the workers' morale is weakening, that their ranks are suffering serious defections, and that the strike is being abandoned in favor of a return to work may bring defeat to the workers' cause and are sometimes circulated for that very purpose. Picketing may dispel such rumors.
>
> The term 'peaceful picketing' implies not only the absence of violence but the absence of any unlawful act. It authorizes picketing which does not interfere with the person or property of another by the unlawful use of force, violence, intimidation or threats. It precludes any form of physical obstruction or interference with an employer's business or the misrepresentation of the facts of the controversy, and should not go beyond the area of peaceful persuasion.

The boundary between lawful and unlawful conduct is that between peaceful persuasion and int idation. The claim of the defendants that intimidation or coercion cannot be found to exist in the absence of actual physical violence or express threats of physical injury to person or property is not well founded and is not in accord with our law.

The legality of picketing in each case depends upon its purpose and the conduct of the pickets. Picketing becomes unlawful if it goes beyond the allowable area of peaceful persuasion and assumes the form of intimidation, threats or violence, impedes traffic to a place of business, or interferes with the free use of property. As to the number of pickets who may be employed in any particular picket line, there is no rule fixing the number at a definite figure. Each case must be judged upon its own particular set of facts. Restatement, 4 Torts § 799, comment h, summarizes the problem in the following language: 'The question is in each case whether the number of pickets plus the attendant circumstances are such that fear of physical harm rather than persuasion is the force loosed upon the persons sought to be influenced. Thus it is important to consider the kind of place picketed and the character of persons sought to be influenced, that is, for example, whether the place picketed is a foundry approached only by men or a department store patronized chiefly by women. It is important also to consider the character of the pickets, whether they are, for example, shy women or rough men. And it is important to consider the conduct of the pickets: whether they behave in a quiet, orderly manner or are boisterous and equipped with weapons of physical harm; whether they obstruct access to the place picketed so as to make ingress or egress difficult or do not interfere with it at all. Other factors may also be important, as, for example, the presence or absence of private guards or

public police and the extent of protection afforded by them. In some circumstances, then, picketing may be a form of peaceful persuasion, though the number of pickets is large; in others, the picketing may not be fair persuasion though the number is small.

Interference with a free right of ingress and egress to and from a plant by those who had such a right is unlawful. *American Steel Foundries* v. *Tri City Central Trades Council*, 257 U.S. 184. Mass and circular picketing is in the same category. *Goldfinger* v. *Feintuch*, 276 N.Y. 281, 286, 116 ALR 477. Likewise, the gathering of strikers in considerable numbers at the entrance of the factory with a threatening attitude towards employees who must run the gauntlet of a hostile picket line in going to and from work may overawe and make them afraid with a show of force which in itself is intimidating.' *Levy & Devaney, Inc.* v. *International Pocketbook Workers Union*, supra.

In the present case, the conduct of the pickets in interfering with those having business with the plaintiff from entering the plant, in picketing in close formation and within circles, and in using offensive language or gestures amounting to intimidation exceeded the bounds of peaceful picketing, and such action was not 'awful' conduct within the meaning of the term in the statute."

The official publication of the I.A.M., The Machinist, in a front-page article in the July 7, 1960 issue, applauded the fact that pickets had lain across the tracks at an East Hartford railroad siding entrance to the plaintiff's plant and stopped a train from entering the plant.

The following officers of the International district # 91 and local # 1746 participated in these illegal activities: Richard Thurer, International representative of the Grand Lodge, Raymond Jutras, an International representative

and the business organizer of #91, and business representatives Robert Nelson and George Cope of district # 91. The local officers who participated were president David Fraser and vice president Stewart. The union stewards and committeemen of local # 1746 who participated were Jean Senecal, William Washington. Zora Fraser, wife of the president of local # 1746, Eleanor Murphy, Thomas Radevitch, Robert Wagner, Condon, Ritchie, Alice Muise, Bryzowy, James Mikelis, Robert Perkins, Grace Baker, Wally Jensen, Moody, Arthur Hepp, Paulson, Libby, Gorry, Stuart Pinchaud, Malley, Wittman, Gene Rippolone, Harry Amera, Gordon Sawyer, Vanderhoven, Malcolm Madison, Bernard McGuinness.

Senior business representative John Main was constantly at the scene observing and voicing no objection.

Following the entry of the stipulation in court June 13, 1960, the threats, acts of intimidation, harassment by phone calls, physical damage to cars and property of nonstrikers continued. From the time the strike started on June 8th until the end of the strike August 11th the personnel director of the plaintiff corporation at the East Hartford plant received in excess of 1,000 complaints concerning such activities, a majority of them being received after June 16th, a date subsequent to the entry of the stipulation.

At the start of the strike June 8th the Grand Lodge representative, Richard Thurer, assigned to district # 91, made a tour of the different gates leading to the aircraft's property and noted that the strike was getting out of hand. He immediately called general counsel Plato Pappe in Washington, asking for legal help in anticipation of a restraining order being sought by the plaintiff. He then called the general vice president, Frederick Coonley, and asked for three other Grand Lodge representatives to be sent in to assist him in the handling of the strike. From June 8th on, conditions at the various gates worsened from day to day. The three Grand Lodge representatives who

were sent to East Hartford by vice president Coonley, were George Poulin, James Moore and Anthony Gilio. Moore was assigned by Thurer to the Hamilton Standard lodge # 743 at Windsor Locks. Poulin was kept in East Hartford working with Thurer until the strike was settled. Gilio having been called by Thurer was assigned to a Massachusetts plant in relief of Thurer at that plant.

The vice president of local # 1746 at the time of the strike was William Stewart. His activity in the affairs of local # 1746 began in 1955 when he became a steward, continuing as such until 1957 when he was elected to the shop committee. He continued as a shop committeeman until June of 1960. In the summer of 1959 he became vice president. In making preparation for the strike the Executive Board of # 1746 consisting of the president, vice president, secretary, treasurer, three trustees and nine or ten committeemen comprising the shop committee, named Stewart a vice charman of the strike policy committee. In attendance at this meeting of the Executive Board as advisors were Cope, Jutras and Main.

A strike fund had been set up in local # 1746 from dues collected over a period of years from union members. To be entitled to strike benefits from International, it was necessary for one to have been a member in the International for a minimum period of six months. Strike benefits were then paid to those strikers qualifying at the rate of $35 per week, starting the second week of the strike. To equalize benefit payments to those members of # 1746 lodge who did not qualify, not having been in the International for the required period, and who received but $15 weekly benefits from the local strike fund, Stewart set up and had sole charge of a collection box located on the stage of Union Headquarters where the benefits were paid by the International. An arrangement had been made with an armored car company for the cashing of all benefit checks at headquarters. Voluntary contributions to help those strikers not entitled to full benefits were dropped into the box by

many strikers receiving full benefits. The contributions for the first three weeks of the strike were turned over to the secretary and treasurer of local lodge # 1746. About $1,000 per week was collected in this manner. After the first three paydays, Stewart the vice president, began to withhold about $50 to $75 a week of the money collected. A portion of this sum was given to three strikers, McLaughlin, a union steward of # 1746, Potter and Ford. On three different occasions they received about $25 to $30 a week. The purpose of giving money to these men was to support their activities as "night riders". As such they damaged automobiles of nonstriking employees. They flooded the cellars of their houses, they burned their hedges, they threw paint bombs through their house windows. They tried to burn a barn behind a house where many nonstrikers lived. They burned one of the nonstriking employee's automobile. Poulin, the International representative, had full knowledge of the activities of these men and acted in conspiracy with them to further their aims. They reported to him what they did. Poulin instigated and encouraged these acts of violence. The reason for this was that as of the week of June 27th the strike had been going badly, more than 10,000 hourly workers having returned to work. Poulin directed Stewart to give money to these three night riders to aid and abet their criminal acts. About the seventh week of the strike Poulin and Potter approached Stewart and Poulin told Stewart that Potter had found a pellet gun and needed $26 to buy it. Poulin instructed Stewart to give Potter the money to buy it, which Stewart did and later advised Poulin that he had followed his instruction.

On August 4, 1961 Stewart voluntarily went to the East Hartford Police Department and gave information to the police concerning the acts of criminal violence committed by the trio of strikers, Potter, McLaughlin and Ford. He told the police that Poulin, Cope and Davis had been furnishing these men the names of those employees returning to work, the purpose being that McLaughlin, Potter and Ford would

harrass, intimidate and threaten the named workers or settle with them in some way or another. Stewart offered to testify in a court of law concerning these criminal activities. At that time he submitted to a lie-detector test. He signed a statement outlining these charges. This was witnessed by the chief of police and the captain of detectives of the East Hartford Police Department. A police investigation followed.

Cope is still employed by district # 91, lives in Hartford County, was available to take the witness stand to refute the testimony of Stewart but did not do so and made no appearance in court.

Poulin is still employed by the Grand Lodge International as a Grand Lodge representative, and is still paid by the International. He lives in Glastonbury, Hartford County, and was available to take the witness stand and refute the testimony of Stewart but did not do so and made no appearance in court.

The situation at the Hamilton Standard division of the plaintiff's corporation ran such a close parallel to the East Hartford Aircraft situation that it was clearly demonstrated that the unions at both these divisions were acting in concert. The strike was started the same day, June 8. Although the president of local # 743, Butler Seedman, testified that he alone was responsible for calling the strike at Hamilton Standard, his own later testimony belied this statement when he admitted that a prearranged telephone call to Union Headquarters in East Hartford was the signal for the strike to start at Hamilton Standard. This was not the only unbelievable portion of his testimony. Another part was when after first denying that in 1960 at the time of the strike he was a member of district # 91, he later, under examination by the court, admitted that he was. Hamilton Standard had a bargaining unit of about 4,000 hourly employees, sixty per cent of whom were members of local lodge # 743 of the I.A.M. In preparation for the

strike, originally scheduled for June 13, and for which sanctions had been granted by the International, twenty-five I.A.M. strike manuals containing instructions on how a striker should conduct himself, were distributed to the officers and the strike committee. In further anticipation of trouble on the picket lines, the strike committee screened the union members for picket duty in an effort to eliminate the hot heads who might generate the trouble. The absurd result of this effort was that a grand total of three union members out of 2,400 were forbidden to take their places on the picket lines. Two were assigned to parking cars and the third was assigned to work at headquarters.

The pre-arranged telephone call made by Seedman to Union Headquarters in East Hartford, was made at 9:55 A.M. June 8. Receiving word that the walkout had started in East Hartford, Seedman in turn called Ann DeFillipo at Broad Brook and the first shift employees of Hamilton Standard at both the Windsor Locks plant and the Broad Brook plant then walked out.

Immediately picket lines were established and a chaotic condition resulted. Hundreds of workers blocked the entrances to the plaintiff's plant. Cars and people were denied access. Threats were made by the picketers, and vituperative and obscene remarks were hurled at anyone seeking ingress to or egress from the plaintiff's property. The picketers became a wild and unruly mob, pummelling cars, tearing off antennas and mirrors from cars, using every means to intimidate those seeking legitimately to enter the plant. Cars seeking ingress had to turn back. Traffic was blocked for a distance of better than one-quarter of a mile. Alexander Latka, a committeeman and assistant chairman of the strike committee, using a bullhorn exhorted the strikers not to let the cars in. Committeewoman Ann DeFillipo, who was also on the strike committee, using a bullhorn, threatened and insulted those seeking to enter or leave the plaintiff's premises. Police had a difficult time making passageways for vehicles. Arrests were made. Ad-

mittedly the strike was out of control from the very moment Seedman, the president of the union, left the factory and tried to get out of the premises. In an attempt to bring order out of this chaotic condition, he admonished the pickets; told them what they were doing was illegal; and complained to the picket committee chairman and captains, ordering them to limit the number of pickets. According to his testimony all this proved fruitless. Thereafter he joined the ranks of the pickets on the illegal picket line himself. In a further attempt to restore order he complained about the situation on the picket lines being out of control to the business representative of the International, John R. Sullivan. Sullivan is the same individual who urged the strikers to picket in masses, and to block anyone from entering or leaving the plaintiff's property. Sullivan also participated in the illegal picketing. Seedman's and Sullivan's attempts to control the situation were spurious and insincere. Seedman's insincerity and duplicity was clearly demonstrated when at a later date the International chief counsel Plato Papps addressed the unions at Bushnell, seeking to end the strike. He at the time particularly noticed Seedman in the gallery laughing at him as he, Papps, was being booed down.

Besides Seedman. who was the president of # 743 and was also an officer of district # 91 being on the picket line participating in the illegal strike actions, the following officers, stewards and committeemen participated: Francis McCann, strike committeeman and chairman of the picket committee, William Merrigan, vice president of # 743, International representative John R. Sullivan, who was the business representative of district # 91, stewards Cosmos Briotta, Italo Pardi, who was also treasurer of # 743, Eugene Carter, Andrew Sidorsky, Edward Davis, Stephen Oski, Alexander Latka, Mitchael Piccin, Edward Butchelder, who was also a vice president of # 743, Alexander Cattoro, William Sander, who was a member of the negotiating committee, and Ann DeFillipo, committeewoman.

Two additional Grand Lodge representatives, James Moore and William Brenner, were at the Windsor Locks gate of the Hamilton Standard daily during the strike. The official newspaper of the I.A.M., The Machinist, in its front page article in the July 7, 1966 issue, applauded the fact that "Twenty girls pickets, on strike for the first time in their lives, refused to back down one inch for 14 brawny State Police at a United Aircraft plant in Broad Brook, Conn."

Seedman other than mildly reproving the picketers, complaining to Sullivan, and passing out the strike manuals, did nothing to remedy and end the mob scene and the illegal activities of the strikers. On the contrary along with Sullivan the International representative, Moore and Brenner the other International representatives, he took to the picket lines and participated in the strike. The other officers and agents of # 743 did the same.

This illegal activity on the picket lines ceased abruptly the moment the stipulation was agreed upon and approved by the court. Thereafter, however, hundreds of complaints of harassment were made to company officials. These included damage to personal property, autos, threats, obscenities and vituperations. The complaints continued until the end of the strike August 11, 1960.

Four defenses to these actions are relied upon by the defendants. The first is that without proof of damage resulting from the illegal acts the plaintiff asserts the defendants committed, the plaintiff lacks standing to sue. The short answer to this is that the defendants themselves at the initial stage of the trial proposed to separate the liability issue from the issue of damages and suggested that the cases proceed on a determination of liability first and then in the event liability was found to exist, to hold a separate hearing on damages. The plaintiff agreed to this. This agreement was approved by the court and it was read into the record at the start of the trial. It ill becomes the de-

fendants at the very end of the trial to attempt to reverse their position, a position which they themselves first brought about. This attempted reversal is rejected.

A second claim is that the suit is barred by the one-year statute of limitations. The section invoked to support this claim is Sec. 52-589 of our General Statutes, Revision of 1958. This section deals with suits based on negligence and reckless misconduct. The plaintiff brought suit, however, under Section 52-577. This provides "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of. (1949 Rev. § 8316). Obviously this is the statute that controls, not the negligence statute. The torts that were committed were definitely intentional. This claim of the defendants has no merit whatsoever.

The third defense is that the strike situation got out of control and therefore the defendants should be excused from responsibility for whatever happened thereafter. If this claim has merit, it is the complete answer to all the problems confronting labor unions during violent strikes, for a claim of losing control would exculpate the unions and their officers from any and all wrongs that ensued.

The case of "*The United Mine Workers of America* v. *Gibbs*, 383 U.S. 715," the governing case involving jurisdiction of state courts in labor disputes, is relied on to support this claim. This 1965 case defined the proof requirements under Section 6 of the Norris-LaGuardia Act. Additionally it dealt with the standards of agency required under Sec. 303 of the Labor Management Relations Act as compared with Sec. 6 of the Norris-LaGuardia Act in which section the words "clear proof" are found. In reviewing the legislative history of the Labor Management Relations Act passed by Congress subsequent to the Supreme Court's decision in the case of "*Brotherhood of Carpenters* v. *U.S.*, 330 U.S. 395" it ruled that the more stringent requirement of proof found in Sec. 6 of the Norris LaGuardia Act, to

wit, "clear proof" was not repealed. The court commented as follows:

> "Shortly thereafter, Congress passed the Labor Management Relations Act, which expressly provides that for the purposes of that statute, including § 303, the responsibility of a union for the acts of its members and officers is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6. Yet although the legislative history indicates that Congress was well aware of the Carpenters decision, it did not repeal § 6 outright, but left it applicable to cases not arising under the new Act. This selectivity is not surprising, for on state claims, though not on § 303 claims, punitive damages may be recovered. The driving force behind § 6 and the opposition to § 303, even in its limited form, was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control. Plainly, § 6 applies to federal court adjudications of state tort claims arising out of labor disputes, whether or not they are associated with claims under § 303 to which the section does not apply.
>
> Although the statute does not define 'clear proof,' its history and rationale suggest that Congress meant at least to signify a meaning like that commonly accorded such similar phrases as 'clear, unequivocal, and convincing proof.' Under this standard, the plaintiff in a civil case it not required to satisfy the criminal standard of reasonable doubt on the issue of participation, authorization or ratification; neither may he prevail by meeting the ordinary civil burden of persuasion. He is required to persuade by a substantial margin, to come forward with 'more than a bare preponderance of the evidence to prevail.' *Schneiderman* v. *United States*, 320 U.S. 118, 125. In our view, that burden was not met."

The defendants here have taken out of this context the phrase "unions might be destroyed if they could be held liable for damage done by acts beyond their practical control," distorting the meaning of the phrase, and fallaciously arguing that this was the decision of the Supreme Court in that case. This phrase was included merely by way of legislative review and was not in any way the decision of the court in this case.

Reference might be made at this point, however, to the minuscule attempts made by the defendants here to bring order out of the chaotic strike situation they engendered. They mildly admonished those engaged in illegal picketing. They passed out pamphlets, containing instructions as to how to behave on the picket line (25 in all), they screened those known to be hot heads (3) and assigned them to other duties. That these feeble efforts would prove totally inadequate was a foregone conclusion and must have been known to the defendants.

The parent union all this while had in its hands the weapons to brink a quick halt to the chaotic conditions in (1) the firing or recall of agents for activities detrimental to the organization; (2) the revocation of sanctions, and (3) in the event the local got completely out of control, as was the situation here, the International could have taken over the local under a trusteeship, an action permitted under the Landrum-Griffin Act, and a procedure written into the constitution of the International. None of these remedial methods was resorted to. The court rejects this defense.

The final defense is that the defendants under Sec. 31-114 enjoy complete immunity from this action. Sec. 31-114 reads as follows:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court for the unlawful acts of individual officers, members or agents, except upon

> proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof." (1949 Rev., § 7410)

It is patterned after Sec. 6 of the Norris-LaGuardia Act, the difference being that under the Norris-LaGuardia Act the phrase reads "upon *clear* proof" as distinguished from our statute which merely requires proof.

The statute was interpreted by our own Supreme Court in the case of *Benoit* v. *Amalgamated Local 299*, 150 Conn. 266. In this case the suit was brought against the union, the union's International organizer individually, and another member of the union. The court stated at p. 273:

> "We have not heretofore been called on to apply the language of 331-114 in circumstances such as the present. Under the statute, liability could not be imposed on the union for the unlawful acts of its individual officers, members or agents except on proof of (1) actual participation in, (2) actual authorization of, or (3) ratification of those acts by the union. The union could act only through the instrumentality of individuals. The court, in its judgment, absolved Kaplan and Ciccolallo, the only individual defendants remaining before it, from any liability for their actions in the picket line, and based the union's liability for what occurred solely on the grounds of authorization and ratification. The element of participation by the union in any activity at the gate is, therefore, not involved in the case before us."

Therein the *Benoit* case differs from the instant case. In this case participation is the ground on which these defendants are to be held responsible. It would be naive indeed to expect that a union will go on record authorizing illegal activities before they take place or ratifying the same activities after they took place. However, there still is some proof of authorization in this case, although it is in-

sufficient to sustain the burden required. It appears in the previously mentioned statements of Jutras and Sullivan.

Section 31-114 provides almost complete immunity to unions and their officers. The question of what constitutes participation sufficient to hold a union responsible has not as yet been decided by either our state Supreme Court or by the United States Supreme Court. Participation was considered by the United States Supreme Court in the *Union Workers* v. *Gibbs* case (supra) but the proof there of factual participation on the part of the union through the activity of its field representative was found lacking. The court found in that case that at the time of the troubles on August 15 and 16, 1966 no representative of the U.M.W., their International union, was present. It further found that the field representative of the union for the area was away attending an executive board meeting and did not return until later in the day on the 16th. He first learned of the violence while at the executive meeting. He returned with explicit instructions from his International union superiors to establish a limited picket line, to prevent any further violence, and to see to it that the strike did not spread to the neighboring mines. There was no further violence at the mine site. The picket line was maintained there for nine months. This situation contrasts sharply with the activities of the defendants in this case. There the court was faced with total absence of proof of participation by the defendants. Here there is a plenitude of proof of participation.

The Court there stated at p. 732:

> "In the present case, petitioner concedes that violence which would justify application of the state tort law within these narrow bounds occurred during the first two days of the strike."

During these two days, as noted above, no representative of the International was present, the field representative

returning late on the second day and ending the violence and the illegal picketing.

The Court held, at p. 735:

> "Petitioner vigorously contends that § 6 applied to the state claims in this case; that, on this record, it cannot be charged with having participated in or authorized the violence of August 15-16; and that it acts once it learned of the violence fell short of what would be necessary to show either ratification of the violence or any intent to build its picketing campaign upon the fears the violence engendered. We agree."

It further held, on p. 735:

> "At the outset, it is clear that the requisite showing was not made as to possible union authorization of or participation in the violence of August 15 and 16. Although it is undoubtedly true that the officers and members of Local 5881 were present in force at the mine site on those days, neither the Local nor they are parties to this suit. Mr. Gilbert, the UMW representative, had left the area for a business meeting before the series of events culminating in the violence and immediately upon his return, the violence subsided."

And again on p. 739:

> "What is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force.
>
> The record here is persuasive that the petitioner did what it could to stop or curtail the violence. There was repeated and uncontradicted testimony that when

news of the violence reached the meeting that Gilbert was attending, he was given firm instructions to return to the scene, to assume control of the strike, to suppress violence, to limit the size of the picket line, and to assure that no other area mines were affected."

The *Gibbs* case is readily to be distinguished from this case where so many agents and officers of the defendant participated in so many of the illegal activities and so many acts of violence.

If a union is not to be held responsible for the tortious acts of its officers and agents, then § 6 of the Norris-LaGuardia Act and § 31-114 of the General Statutes are meaningless and both Congress and our legislature have indulged in labored acts of futility. Only the super credulous would believe that a union would go on record authorizing illegal activities and violence or ratify the same after they occur. If these defendants are not to be found responsible on the clear proof of the participation of their officers and agents in legal acts, and are on the contrary entitled to a total exemption of responsibility from all such acts, then the statute has no place in our laws and should be removed from the statute books.

The defendants are found liable to answer in damages for the tortious acts committed during the strike.

Memorandum of Decision on Hearing in Damages

(Gaffney, J.)

(November 26, 1968)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

Memorandum of Decision on Hearing in Damages

This court in a decision dated May 31, 1968 found the liability issues in favor of the plaintiff and ordered a hearing in damages to proceed. The plaintiff opened this hearing by calling as witnesses 190 employees from the Pratt & Whitney Division of the plaintiff and 23 employees from the Hamilton Standard Division. With very few exceptions, they absented themselves from work because they were afraid to return. They had seen, heard about,

read about, or experienced the violence of the picket lines. The stipulation between the parties to this suit limiting the number of pickets in no way brought an end to the harassment and intimidation of the workers. Many of these were plagued by threatening phone calls. Others suffered property damage to home and cars. The threats and acts of intimidation created a situation in which employees who wanted to return to their jobs, did not report because they were fearful of consequences. Through the testimony of these witnesses, a clear pattern of lost work days directly and proximately attributable to the illegal acts of the defendants was established. The plaintiff offered to produce approximately one thousand additional employees, all of whom had already been interviewed. A great majority of these, in an offer of proof made by the plaintiff's counsel, would have testified that they desired to return to work but were apprehensive about doing this. The court deemed it unnecessary to have these witnesses appear.

The plaintiff introduced Herbert R. Northrup, an industrial relations consultant with a long and impressive background in the labor relations field. As professor and chairman of the Department of Industry of the Wharton School of Finance and Commerce of the University of Pennsylvania, a text writer, a consultant in labor economics and industrial relations, he qualified as an expert in the field. He had read the transcript, the briefs and court's decision in this case. He had studied the exhibits and viewed the motion pictures. The court has given credence to his testimony. Absent the violence, the strike at the Pratt & Whitney Division would not have lasted beyond three weeks, and the strike at the Hamilton Standard, where a much stronger union existed, would not have extended beyond four to six weeks. At the end of the three-week period at Pratt & Whitney, fear was the reason fifty per cent of the employees did not report for work. This percentage diminished gradually so that by the end of

July, 1960, twenty-five to thirty-three and one-third per cent of these employees were still out of work for fear of their own safety. At Hamilton Standard by the end of the strike, twenty per cent of the work force failed to report for the same reason.

Charles B. Preston, Comptroller of the plaintiff company, testified, from a formula which he devised, to the damages incurred by the plaintiff during the strike period at both Pratt & Whitney and Hamilton Standard Divisions. (Plaintiff's Exs. F and J). The logic and the mathematical correctness of the formula was supported by Mr. Wyman G. Patton, a C.P.A. and a partner in Price Waterhouse & Co. with twenty years' familiarity with the plaintiff's standard cost accounting system. Support for the Preston formula was also given by the principal defense expert in cost accounting, James Bassage, who testified that the fromula was fair, acceptable, and proper in comparing excessive costs in one period with another. He characterized it as being a very ingenious and competent job. The foundation stone of the formula is the number of man days lost attributable to the acts of the defendants during the strike. From this arises the claimed excess of manufacturing costs and the loss due to overhead and other expenses borne by the plaintiff without reimbursing compensation. The losses at each of these two plants were predicated on these two elements, which, when transposed into dollars and added together, constituted the Company's loss. The first consisted of a comparison of increased costs in the strike period in certain categories, as compared with the standard direct labor manufacturing costs under normal operation during the same period. The increases were noted in the following categories: labor efficiency variance, overtime premiums, corrective work, spoiled work; training, and at Hamilton Standard, in lieu of training, make-or-buy conversions. The claimed increases in the excessive manufacturing costs at Pratt & Whitney amounted to $1,208,352 for the period of the

strike. The second was a compilation of the increase in overhead and other expenses, called "overhead burdens", allocable to the reduction of the level of manufacturing operations during the strike period at Pratt & Whitney. The increased costs in overhead burdens were claimed to be $7,171,632. The combined total of the two was $8,379,984, from which is subtracted a portion attributable to man days lost during the strike at the North Haven plant of the plaintiff (where no claim of strike violence is made) in the amount of $2,371,535, leaving a total damage claim of $6,008,449.

At Hamilton Standard the claimed cost under the first element (excessive manufacturing costs incurred during the strike period) was $205,017. The second element (overhead burdens) was $2,233,203. The total of the two was $2,438,220.

The defendants quarrel only with the formula for both Pratt & Whitney and Hamilton Standard in regard to the failure of the plaintiff to shred out the categories making up the total excessive manufacturing costs in greater detail and with the increased costs charged to overhead burdens and not the formula itself.

Losses directly and proximately caused by illegal strike activities are proper elements of damage. See *Overnite Transportation* v. *Teamsters,* 257 N.C. 18 (other citations). As held in *United Electrical, R. & M. Workers* v. *Oliver Corp.,* 205 .F.2d 376, 387 (8th Cir. 1953): "When productive labor in a plant is reduced for any period to less than the normal, the company sustains a loss in the expenditure of necessary overhead for which it receives no production." For another similar example see *Steelworkers* v. *CCI Corp.,* 395 F.2d 529 (10th Cir. 1968); also *Local Union 984, Int. Bro. of Teamsters, etc.* v. *Humko Co.,* 313 F.2d 869.

The Connecticut Supreme Court allows damages for losses resulting from additional costs brought about by

reason of injuries received. *Ball* v. *Pardy Const. Co.*, 108 Conn. 549, 551; *Moiger* v. *Conn. Ice Cream Co.*, 146 Conn. 551, 554.

The fact that an exact determination of damages cannot be made with certainty does not bar or preclude an ascertainment of the damages. What is required is a reasonable basis for a reasoned conclusion.

> "Where a defendant has by his wrongful conduct made the calculation of damages difficult, he will not be heard to urge such difficulty as a reason for not assessing by approximation. *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U.S. 359, 378, 47 S.Ct. 400, 71 L.Ed. 684. Although applied to a different set of facts, what we said in *Ball* v. *Pardy Construction Co.*, 108 Conn. 549, 551, 143 A. 855, is applicable here: "From the very nature of the situation, the amount of loss cannot be proved with exactitude and all that can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate . . . . Mere difficulty in the assessment of damages is not a sufficient reason for refusing them where the right to them has been established.' . . . " *Crowell* v. *Palmer*, 134 Conn. 502, 511.

This rule is in direct line with the federal authorities cited above.

The strike ended August 11, 1960. The plaintiff is not entitled to claim, as it does in its formula, the entire number of work days lost during the strike (based as it is on a normal 5-day work week) because it concedes that at Pratt & Whitney the strike under normal non-violent conditions would have lasted three weeks and at Hamilton Standard under normal non-violent conditions the strike would have

extended four to six weeks. No claim, therefore, is allowed for any manpower shortage by reason of fear of reporting during the three-week period at Pratt & Whitney and the four to six-week period at Hamilton Standard. Any work stoppage during these workdays would have been due to a lawful strike. The court does not accept the theory that the calling of the strike in the first instance was an illegal act, and that the defendants should pay all damages accruing to the plaintiff for the entire duration of the strike as a consequence thereof. The elimination of the three-week period (15 workdays) at Pratt & Whitney reduces the number of man days during which a portion of the labor force failed to report from 37 to 22. During these days the excessive manufacturing costs and the overhead burdens apply. During these same 22 days, which extended from late June to July 29, many workers overcame their apprehensions about their personal safety and returned to their jobs. In late June, fifty per cent of those still not reporting did not do so because they were afraid to report. By July 29, however, this percentage had diminished from 33⅓ to 25%.

The plaintiff's claimed loss of $6,008,449 is based on the excessive manufacturing costs plus the overhead burdens for the full strike period on a one hundred per cent claim of work loss for all employees not reporting for work except those who were hard core union members and sympathizers.

The court adopts the elements of the plaintiff's formula but arrives at a finding of damages in the following manner: The total claimed damages in the amount of $6,008,449 is divided by 37, the total number of claimed man days lost. This results in a per diem man day loss to the plaintiff of $162,391. This per diem rate is then multiplied by twenty-two days [the 15 days, or three-week period having been eliminated] during which the loss of manpower due to the

illegal activities and the resultant fear of employees to return to their jobs can be charged. This result is $3,572,602. During these days, which extended from late June to July 29, there was at the start, a fifty per cent deficiency in the work complement ascribable to fear, diminishing daily until at the end of July (the first two weeks in August being the normal annual vacation period) there was a work deficiency of from thirty-three and one-third per cent to twenty-five per cent. Taking the twenty-five per cent figure and striking a mean between this percentage and the fifty per cent percentage gives a mean percentage of thirty-seven and one-half per cent. This percentage is then taken of the sum total of the 22 days multiplied by the per diem rate of $162,391. The damages then found to be due to the illegal acts of the defendants are $1,369,725.25. (See appendix.)

In the case of Hamilton Standard the same method of computation is used. The claimed damages of $2,438,220 is divided by the 33 man days lost to determine a per diem loss of $73,885. At Hamilton Standard the six-week period estimated for normal strike would have ended July 29. Any claim of reduced manpower is limited to the 6 working days in August. (The annual vacation at this plant occurs the last two weeks of July.) Multiplying the per diem rate by 6 and taking twenty per cent of this amount leaves a finding of damages at Hamilton Standard in the amount of $88,662 as a result of the illegal strike activities. (See appendix.)

At no time from the period of the strike to the institution of these lawsuits or at any later date did the plaintiff waive its claims for damages nor condone the acts of the defendants, nor did the plaintiff use these lawsuits for bargaining purposes to induce the defendants to withdraw their claims in their action in the United States District Court.

The plaintiff, Pratt & Whitney, is entitled to damages in the sum of $1,369,725.25 with interest from August 12, 1960.

The plaintiff, Hamilton Standard, is entitled to damages in the sum of $88,662 with interest from August 12, 1960.

The conduct of the defendants, comprising as it did wanton and violent acts, bringing injury to the plaintiff, justifies an award of exemplary or punitive damages. *Triangle Sheet Metal Works, Inc.* v. *Silver*, 154 Conn. 116, 128.

The following expenses of litigation are allowed:

Wiggin & Dana	$160,000
Wells	9,500
Costs of investigation	20,000
Witnesses	12,000
Accounting	20,000
Personnel Expenses	60,500
Price Waterhouse & Co.	5,000
Preparation	4,000
Showing of films	5,000

Two-thirds of these exemplary damages are to be applied to case No. 133884, Pratt & Whitney; and one-third are to be applied to case No. 133885, Hamilton Standard.

Judgment may enter in accordance with the above.

APPENDIX (to Memorandum Decision)

FORMULA

PRATT & WHITNEY DIVISION

37 total man days	$162,391	(per diem man day loss		(per diem man		
lost during strike 37)	$6,008,449	(claimed loss)	$162,391	day loss	$3,572,602	
			x 22	(number of days lessened work force due to strike after 15 work days of a normal elimination of	x 37½%	(mean percentage of workers absent due to fear of returning.)
			$3,572,602	strike period.)	$1,369,725.25	DAMAGES

HAMILTON STANDARD DIVISION

33 total man days	$73,885	(per diem man day loss)		(per diem man		
lost during strike 33)	$2,438,220	(claimed loss)	$ 73,885	day loss)	$ 443,310	(percentage of
			x 6	(number of days lessened work force due to strike after normal strike	x 20%	workers absent due to fear of returning.)
			$ 443,310	period.)	$ 88,662	DAMAGES

SUPREME COURT

March Term, 1971

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS ET AL.

(two cases)

Actions to recover damages for losses resulting from tortious conduct and wilful and malicious acts during a strike, brought to the Superior Court in Hartford County and tried to the court, *Gaffney, J.*; judgments awarding the plaintiff compensatory and exemplary damages and appeal by the defendants and by the plaintiff. ***Error in part; new trial.***

Norman Zolot and, of the District of Columbia bar, *Mozart G. Ratner,* for the appellants (defendants) in each case.

John D. Fassett, with whom was *S. Robert Jelley,* for the appellee (plaintiff) in each case.

ALCORN, C. J. We are confronted with two appeals by the defendants from judgments awarding damages to the plaintiff in two cases which were tried together. The appeals have been consolidated for presentation to this court. In each action the plaintiff sought the recovery of both compensatory and exemplary damages from the defendants jointly and severally based upon allegedly tortious acts committed in the course of an illegal strike. As the cases have been presented in the trial court and here, four different defendants representing three different union organizational levels are involved. One case relates to a strike which took place at the plaintiff's Pratt & Whitney Divi-

sion factories in East Hartford and Manchester, Connecticut. The other case relates to a simultaneous strike at the plaintiff's Hamilton Standard Division factories in Windsor Locks and Broad Brook, Connecticut. The top level of union organization involved is the defendant International Association of Machinists, hereinafter referred to as International. The next in union jurisdictional authority under International is the defendant Aeronautical Industrial District Lodge No. 91, hereinafter referred to as District 91. International and District 91 are defendants in both cases. At the bottom of International's union organization are the defendant Industrial Aircraft Lodge 1746 of the International Association of Machinists, hereinafter called Lodge 1746, and Industrial Aircraft Lodge 743 of the International Association of Machinists, hereinafter called Lodge 743. Members of Lodge 1746 were employed at the plaintiff's East Hartford and Manchester factories and Lodge 1746 was a defendant, along with International and District 91, in the action involving the strike at those plants. Members of Lodge 743 were employed at the plantiff's Windsor Locks and Broad Brook factories and Lodge 743 was a defendant, along with International and District 91, in the action involving the strike at those plants.

The defendants in each case filed identical pleas in abatement attacking the court's jurisdiction; the plaintiff demurred, and the court sustained the demurrers. The defendants in each case filed identical demurrers to the relief sought and the demurrers were overruled. The issues raised by these pleadings require no individual discussion because they are encompassed within the principal issues on this appeal. Following other preliminary pleading the issues were closed, trial was had first on the issue of liability and, subsequently, on the issue of damages. Judgment was rendered on November 26, 1968, that the plaintiff recover, in the case involving the strike in East Hartford and Manchester, damages of $1,369,725.25 with interest from August 12, 1960, exemplary damages of $197,333.33

and costs of $739.90; and, in the case involving the strike at Windsor Locks and Broad Brook, damages of $88,662 with interest from August 12, 1960, exemplary damages of $98,666.67 and costs of $241.70.

The court's finding, embraced in 866 numbered paragraphs covering 247 printed pages of the record is the subject of a massive attack by the defendants. It would prolong this opinion beyond all reason to discuss the errors assigned in the finding. Suffice it to say that they have been carefully examined and that no correction which would have a material bearing on the decisive issues is required.

The plaintiff has filed a cross appeal in which it too assigns error in the finding and also in the court's failure to find that the defendants authorized, participated in and ratified the acts complained of, and in its finding and award of damages. Here again the claims concerning the finding have been carefully examined and no correction which would have a material bearing on the decisive issues is found to be required. As in the case of the appeal, the claims of law and fact made in the cross appeal are disposed of in the ensuing discussion of the essential dispute between the parties.

The real issue raised by the appeal are: (1) whether the trial court had jurisdiction of the controversy, (2) whether the trial court erred in imposing liability on the defendants, and (3) whether the trial court erred in assessing damages. We will discuss those issues in that order.

I

Based on the doctrine of federal preemption, the defendants assign error in the court's refusal to dismiss both actions on jurisdictional grounds. There is no denying the fact that the jurisdiction of the state courts over labor disputes has been greatly restricted by the passage of the Labor Management Relations Act, 1947, and the establishment of the Labor Management Relations Board. The

complaints in these actions alleged in substance, however, that, while the plaintiff was negotiating collective bargaining agreements with Lodge 1746 and Lodge 743, all of the defendants joined in concerted and unlawful mass picketing, personal violence, invective and intimidation with the wilful and malicious purpose of coercing and preventing persons from entering the plaintiff's premises as a result of which the plaintiff suffered severe financial damage. It is well established that state courts have jurisdiction over such tort actions. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 721, 729, 86 S. Ct. 1130, 16 L. Ed. 2d 218; *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 247, 79 S. Ct. 773, 3 L. Ed. 2d 775; *United Automobile Workers* v. *Russell,* 356 U.S. 634, 635, 646, 78 S. Ct. 932, 2 L. Ed. 2d 1030; *United Construction Workers* v. *Laburnum Construction Corporation,* 347 U.S. 656, 657, 74 S. Ct. 833, 98 L. Ed. 1025. The claim of the defendants that the court lacked jurisdiction is without merit.

The defendants also attacked the court's jurisdiction on the ground that "federal law prohibits employers from using state court damage suits, predicated on strike misconduct, as 'weapons of economic coercion' ", relying on an observation made in *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 64, 86 S. Ct. 657, 15 L. Ed. 2d 582. The assertion of the accepted right to bring a state court action for damages arising from tortious conduct, as in the present cases, does not come within the ambit of the proposition stated even if the case relied on supported it.

The defendants' claims that the actions are barred by waiver, estoppel and condonation are completely without merit and do not require discussion.

II

We turn, then to the question of the correctness of the trial court's conclusion that liability could properly be imposed on the defendants for the tortious acts complained of. Since these acts occurred in the course of a labor

dispute, § 31-114 of the General Statutes becomes pertinent. The statute is printed in the footnote.[1] That statute, in substance, provides that liability cannot be imposed on organizations such as the defendants, participating or interested in a labor dispute, for the unlawful acts of its individual officers, members or agents except upon proof of (1) actual participation in, (2) actual authorization of, or (3) ratification of those acts by the defendants.

The plaintiff invokes the doctrine of respondeat superior under the common law of agency. Its argument is, in the first place, that, assuming that § 31-114 applies to cases such as the present, the statute did not do away with the common-law rules of agency and, secondly, in effect, that common-law rules of agency apply in these cases because § 31-114 does not apply.

There is no legislative history available to aid us in determining the extent to which, if at all, the General Assembly intended § 31-114 to displace the rules of agency in the case of labor unions involved in labor disputes. In *Benoit* v. *Amalgamated Local 299*, 150 Conn. 266, 274, 188 A.2d 499, however, we said that the language of § 31-114 is so similar to the language of § 6, of the Norris-LaGuardia Act (47 Stat. 71, § 6, 29 U.S.C. § 106)[2] that the construction

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[1] "Sec. 31-114. RESPONSIBILITY FOR UNLAWFUL ACTS. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court for the unlawful acts of individual officers, members or agents, except upon proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof."

[2] "[47 Stat. 71, § 6, 29 U.S.C. § 106] No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

placed upon the latter by the United States Supreme Court is particularly pertinent in our construction of § 31-114.

We are persuaded by the reasoning and conclusions in cases construing § 6 of the Norris-LaGuardia Act that the liability of these defendants is to be determined by the application of § 31-114 of our General Statutes and that the common-law rules of agency are pertinent to § 31-114 only as an aid to determining actual participation in, actual authorization of, or ratification of the acts complained of. In other words, we believe that while a labor union which could properly be held to be liable under § 31-114 would probably also be liable under agency principles, nevertheless liability under common-law agency rules would not necessarily create liability under § 31-114.

The legislative history of § 6 of the Norris-LaGuardia Act, which we consider as somewhat of a twin to our own § 31-114, was reviewed in *United Brotherhood of Carpenters v. United States,* 330 U.S. 395, 67 S. Ct. 775, 91 L. Ed. 973. In that case the court said (p. 403): "We need not determine whether § 6 [of the Norris-LaGuardia Act] should be called a rule of evidence or one that changes the substantive law of agency. We hold that its purpose and effect was to relieve organizatioins, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration." The court went on to state (p. 406): "We hold, therefore, that 'authorization' as used in § 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. We are of the opinion that the requirement of 'authorization' restricts the responsibility or liability in labor dis-

putes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general authority as such officers or members, to those associations, organizations or their officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followed from a granted authority, by the association or non-participating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence."

Congress thereafter enacted the Labor Management Relations Act (61 Stat. 136, 29 U.S.C. § 141), providing a statutory right of action for money damages in certain classes of labor disputes. 61 Stat. 159, § 303 (b), 29 U.S.C. § 187 (b). Section 303 of that Act was compared with § 6 of the Norris-LaGuardia Act in *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218, in which the court stated (p. 736) that "the responsibility of a union for the acts of its members and officers [under § 303] is to be measured by reference to ordinary doctrines of agency, rather tnan the more stringent standards of § 6." See also *Riverside Coal Co.* v. *United Mine Workers*, 410 F.2d 267, 270 (6th Cir.); note, 63 Harv L. Rev. 1035, 1039.

Thus it appears that the United States Supreme Court construes common-law rules of agency to be applicable in actions under § 303 of the Labor Management Relations Act but not under the stricter requirements of § 6 of the Norris-LaGuardia Act, of which our § 31-114 is the counterpart. The plaintiff has overlooked this distinction in relying on several federal decisions in which neither § 6 of the Norris-LaGuardia Act nor a state statute like § 31-114 was being considered.

We turn, then, to the specific question of the liability of the defendants, or any of them, under § 31-114. This involves consideration of the meaning of "actual participation", "actual authorization" and "ratification". We believe that the repetition of the word *actual* is of particular significance. Of course, as was mentioned in *Benoit* v. *Amalgamated Local 299*, 150 Conn. 266, 273, 188 A.2d 499, organizations such as these defendants can act only through the instrumentality of individuals. Likewise, it is generally understood that designated officers of such organizations are clothed with a general authority commonly accepted as incidental to the office held. We conclude that, in requiring *actual* authorization in order to impose liability, it is the intent expressed in § 31-114 to require more than the agency rules of respondeat superior and more than the general authority with which an officer of the organization is clothed by virtue of his office. We subscribe to the proposition that the statute requires proof by the plaintiff that the acts complained of were either expressly authorized by the organization to be charged or were such that they flowed from that authorization. *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, 67 S.Ct. 775, 91 L.Ed. 973; *United Mine Workers* v. *Gibbs*, supra, 738-39.

The same limitations must be held to apply to ratification. The proof must be of a ratification knowingly made in express and direct acts or terms of assent to the acts complained of by the organization to be charged. Implied ratification such as the law of agency presumes from the acts of a principal is not sufficient. "There can be no rigid requirement that a union affirmatively disavow such unlawful acts as may previously have occurred. . . . What is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force." *United Mine Workers* v. *Gibbs*, supra, 739.

When we come to the element of participation, we conclude that if representatives of the organization to be charged are proved to have actually taken part in the illegal acts complained of then the organization can be held liable for those acts depending upon the number and status of the persons participating and the extent of the organization's knowledge of and power to control their actions. In applying this rule, care must be taken in cases such as those before us to treat the individuals involved in their proper relationship. We believe that, to the extent that the liability of one organizational level of the union is predicated in part on the acts of members or officers of another organizational level, knowledge of those acts by the organization sought to be charged and its authority and ability to control those acts is relevant to the question of the organization's liability.

Applying the foregoing principles to the material facts found by the trial court, it is our conclusion that, while a case may arguably be made for the liability of these defendants on the ground of ratification, liability should be made to rest on the ground of actual participation in the illegal or tortious acts complained of.

Summarizing, as briefly as we are able, the voluminous facts found by the trial court, and reciting only those which we consider to be material to our decision and not subject to correction, the picture presented is as follows. The president of International was Albert J. Hayes. A vice-president of International was Fred Coonley, who was responsible for the geographical area in which the plaintiff's plants were situated. Richard L. Thurer was International's representative assigned to supervise District 91 and Lodges 1746 and 743. District 91 had administrative control over Lodges 1746 and 743. District 91 and Lodges 1746 and 743 were affiliated with International. John K. Main was senior business representative, and George Cope, John R. Sullivan and Robert Nelson were business representatives of District 91. Cope was assigned to service

Lodge 1746 and Sullivan was assigned to service Lodge 743. Raymond Jutras and Robert Davis were district organizers for District 91. David Fraser was president and William Stewart was vice-president of Lodge 1746. Butler J. Seedman was president and Edward Batchelder was vice-president of Lodge 743. Lodges 1746 and 743 represented bargaining unit employees of the plaintiff.

The plaintiff had two collective bargaining agreements with Lodge 1746 which terminated on December 4, 1959. The plaintiff had collective bargaining agreements with Lodge 743 which expired on April 21, 1960. Bargaining efforts on the agreements were proceeding unsuccessfully. Prior to said dates, namely, on November 30, 1959, Coonley and another International vice-president met in Hartford with Thurer, Fraser and Seedman and discussed plans for a strike. On April 10, 1960, at a meeting of the members of Lodge 1746, Jutras reported that he had been assigned "to start a future program against" the plaintiff; that he had visited International's local lodge at the Republic Aviation Corporation, "for suggestions as to how to stage a successful strike"; that if they struck they must fight and fight hard and they would need hundreds of pickets, and also attorneys to fight injunctions. On April 11, 1960, at a meeting of District 91 attended by Main, Cope, Nelson, Davis, Sullivan, officers of District 91, and delegates from Lodges 1746 and 743, Jutras reported that he had been assigned to lay out machinery for strike action in Lodges 1746 and 743, that "we can get experienced help from Grand Lodge to train and help our membership", that he had visited International's local lodge at Republic Aviation, that Republic was "in the same class" as United, and that he had "learned much" at Republic. At the same meeting, Cope reported that District 91 was arranging for Hayes, president of International, to address a mass meeting of the members of Lodges 1746 and 743 on May 22, 1960, the meeting to be coordinated by vice-president Coonley. There had been violence in the Republic Aviation

strike which had been considered a "precedent-setting victory" for International. The strike at Republic Aviation had been under Coonley's jurisdiction, and Joseph Curran had worked there under Coonley's supervision. Curran had been International's representative assigned to International's local union which struck against Republic Aviation. District 91 requested Coonley to assign Curran to address 409 picket captains from Lodges 1746 and 743 concerning their strike duties, and he did so on May 15, 1960. Main, as senior business representative of District 91, was in charge of the strike at the plaintiff's plants and had the function of obtaining the release of pickets who were arrested. Jutras was his assistant and was to coordinate the activities of the other business representatives and district organizers. Cope and Nelson were assigned to supervise activities at the gates at the plaintiff's East Hartford plant, and Cope's intention was to block the gates so that employees would be unable to enter. Davis' assignment was to keep the gates manned by pickets.

A mass meeting, supervised by Coonley, was held as scheduled at the Bushnell Memorial Hall on Sunday, May 22, 1960, which was addressed by Hayes, president of International. The next day Lodges 1746 and 743 voted to strike. Direct responsibility for conducting the strike at the plaintiff's plants was delegated by International to vice-president Coonley and Thurer, International's representative, although such a delegation was not in accordance with International's usual policy. On May 25, 1960, Lodges 1746 and 743 applied to International for strike sanctions, and on June 2, International granted the sanctions. On June 8, 1960, the strike commenced at the plaintiff's East Hartford and Manchester plants about 9 a.m. and at the plaintiff's Windsor Locks and Broad Brook plants at about 9:55 a.m.

From June 8 through June 13, 1960, strikers marched by the hundreds, shoulder to shoulder, at the gates of the East Hartford plant, massed at the gates and blocked vehicles

containing employees attempting to enter or leave, physically attacked employees attempting to enter or leave in automobiles or on foot, made contemptuous and threatening gestures to employees, shouted profanities, obscenities and threats of physical harm, shoved, kicked, pushed, slapped, and scratched employees, and broke mirrors and radio antennas and windows of automobiles attempting to enter or leave the plant. The police were compelled to push strikers forcibly aside in order to clear passageways for vehicles entering or leaving the plant. Hundreds of automobiles containing workers turned away. The police attempting to control activities were shoved against and onto the hoods of automobiles. Nails, tacks and other sharp objects were strewn on the road surface. The occupants of automobiles and pedestrians were spat at. The registration numbers of automobiles and the identity of occupants of vehicles were ostentatiously noted, and vehicles and their occupants were photographed. The photographs were posted on the bulletin board at 1746's lodge hall to intimidate employees so that they would not go to work. Mirrors were used to reflect sunlight into the lenses of cameras which the plaintiff attempted to use to record pictures of the activities. The result was that at the gates of the East Hartford plant traffic was snarled and blocked for many blocks. The aforementioned activities were participated in by thousands of members and many of the stewards, picket captains and committeemen of Lodge 1746. Fraser, the president, and Stewart the vice-president of Lodge 1746, Nelson, the business representative of District 91, Cope, the business representative of District 91, Jutras, district organizer of District 91, and Thurer, International's representative, all participated personally in the activities described. Thurer reported daily by telephone to Coonley as to what was going on, and Coonley regularly came to Hartford during the strike to meet with Thurer. International's representatives G. Poulin, G. Page and A. Giglio were also present at or near the entrance to the plaintiff's East Hartford plant from June 8 through June 11.

From June 8 through June 13, the same tactics were employed at the plaintiff's Windsor Locks plant, Broad Brook plant and Manchester plant. More than 1000 members, and many stewards, committeemen and officers of Lodge 743 participated in the activities at the Windsor Locks and Broad Brook plants. Seedman, president, and Batchelder, vice-president, of Lodge 743 as well as vice-president William Merrigan and Sullivan, business representative of District 91, participated personally. Special representative James D. Moore and auditor Benner of International along with Thurer, Symington, Page and Poulin, all International representatives, were present at the entrances of the Windsor Locks and Broad Brook plants occasionally. The strike activities of Lodges 1746 and 743 were so similar as to indicate a concert of activities.

The plaintiff instituted injunction actions in the Superior Court to restrain the mass picketing, violence and other illegal activities, and an order to show cause was issued returnable June 13, 1960. The general counsel of International came to Hartford and, after conferences, stipulations were entered into in substance enjoining the defendants from engaging in mass picketing, interfering by force, violence or intimidation with employees and limiting the number of pickets at the plaintiff's gates. Another action was brought by the regional director of the Labor Management Relations Board in the United States District Court to enjoin International and Lodges 1746 and 743 from the unlawful activities taking place at the plaintiff's plants and, on June 16, a stipulation in substance similar to that issued in the Superior Court was entered into.

Following the issuance of the injunctions, the strike continued until, on August 8 and 9, Lodge 743 and Lodge 1746, respectively, voted to end it. Between June 16 and August 8 and 9, however, the violence at the gates of the several plants materially decreased. The mass picketing

ceased, but picketing in limited numbers continued. Pickets, however, still obstructed vehicles until required to move by the police, struck, coerced and threatened persons, and recorded registration numbers of automobiles and the names of the occupants. Trucks of the plaintiff's suppliers had difficulty in entering the plants or had to turn away, and private contractors were prevented from entering. District organizer Davis threatened an employee with bodily harm if she continued working. Thurer, International's representative, threatened bodily injury to the plaintiff's photographer.

During the strike International's general counsel came to Hartford and recommended that all of International's representatives and district organizers assigned to deal with the plaintiff be suspended but International took no action to suspend them. There is nothing in the finding to indicate that, until the stipulation in the injunction actions, any defendant made any effort to restrict the activities at the plaintiff's plants.

In discussing "actual authorization" in *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, 409, 67 S. Ct. 775, 91 L. Ed. 973, the court said: "There is no implication in what we have said that an association or organization in circumstances covered by § 6 [of the Norris-LaGuardia Act] must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act or any other law or to give antecedent approval to any act that its officers may do." We think an analogous rule applies under § 31-114 with respect to "actual participation" and that explicit authority to participate need not be proved in order to establish the organization's participation. The court found the activity which we have summarized to be tortious, as it obviously was. It further found that those acts followed concerted preliminary planning after study of the violence indulged in by International's local union in the Republic Aviation strike, which International had considered a "precedent-

setting victory". From June 8 to 13, large numbers of members and officers of the several defendants actively participated in the extreme violence which took place at the several plants, many of the officers who participated held positions of the highest authority and responsibility in the several organizations, and, although they were obviously fully aware of what was going on, no effort whatever appears to have been made by any defendant to end or restrict the activity prior to the stipulations in connection with the injunction actions. Thereafter, acts of the same sort and by some of the same persons continued at the various plants, although in a lesser degree, until the strike ended in August. Even during this latter period there appears to have been no effort exerted by any defendant to end the violence completely. The activity was reprehensible in the extreme and it is not to the credit of any of the defendants to attempt to assert as a shield that the actions complained of were those of individuals divorced from their sponsorship. The trial court was fully warranted in concluding that all of the defendants were liable for the acts which occurred at the various plants between June 8 and August 8 and 9, 1960, because of their actual participation in those acts. *Riverside Coal Co.* v. *United Mine Workers,* 410 F.2d 267, 272 (6th Cir.). In view of this conclusion, we see no need for further discussion of the subject of actual authorization or ratification.

Other vicious and lawless acts are found by the trial court to have been committed by individuals away from any of the plaintiff's premises. These are found to have been inflicted on employees of the plaintiff and to have consisted of burning and otherwise damaging automobiles, homes and outbuildings, flooding the cellars of homes, releasing the air from automobile tires, and harassment on the highways. The admission of the evidence concerning some of these acts was objected to by the defendants and is assigned as error. It is unnecesary to discuss these

assignments, and we have not recited these incidents as proven facts material to the issue of the defendants' liability for two reasons. In some instances, the evidence concerning some of the incidents consists of reports received by the plaintiff of acts done by unidentified persons. In other cases the evidence relates to acts which are not sufficiently shown to have been within the knowledge of any but the few persons concerned and thus not within the knowledge or control of the defendants. For these reasons we have concluded, without engaging in extended discussion of specific events, or rulings concerning the evidence relating to them, that the defendants are not shown to have participated within the meaning of § 31-114 in the acts, vicious and lawless as most of them were, which occurred other than at the gates or premises of the plaintiff's several plants and, consequently, are not liable for damages based upon those activities. To the extent that the court awarded damages arising from activities which occurred other than at the plaintiff's several plants we must find error.

III

The trial court rendered judgments in the two cases for the plaintiff to recover a total of $1,754,387.25 in compensatory and exemplary damages. Both the plaintiff and the defendants assign error in the damages awarded. In assessing compensatory damages the trial court awarded the plaintiff a sum attributable to losses caused by the involuntary absence of employees due to fear or compulsion resulting from the tortious acts which were committed both at the plaintiff's premises and elsewhere. We have concluded that the court erred in finding the defendants liable for tortious acts which were committed away from the plaintiff's premises. Consequently, the case must be remanded for a new trial on the damage issue. We therefore do not discuss in detail the plaintiff's and the defendants' assignments of error concerning the various

aspects of the award of compensatory damages. We shall limit our discussion to matters which may serve to aid the trial court on the remand.

The defendants claim, in effect, that the court erred in allowing a recovery for losses which the plaintiff would inevitably have sustained from lawful strike activity. In support of this claim they correctly assert that a state court may properly award damages only for losses arising from tortious conduct and not for losses arising from protected strike activity. See *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 729-30, 86 S. Ct. 1130, 16 L. Ed. 2d 218. The short answer is that the court did limit its award only to damages arising from tortious acts.

The plaintiff claims in its cross appeal that the trial court erred in failing to award all of the losses incurred by the plaintiff as a result of the strike on the ground that tortious strike conduct was so intertwined with lawful strike conduct as to preclude apportionment. The trial court overruled this claim and the plaintiff assigns error in this ruling. The plaintiff relies principally on *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, as interpreted in *United Mine Workers* v. *Gibbs*, supra, 731. *Meadowmoor* was an injunction action in which the court held that a state court could properly enjoin picketing in itself peaceful which was contemporaneously enmeshed with concededly outlawed violent conduct. Subsequently, in *Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131, 139, 78 S. Ct. 206, 2 L. Ed. 2d 151, the court held that a state court could not enjoin both peaceful picketing and violent picketing, apparently treating the case before it as differing from *Meadowmoor* in that a pattern of violence was not established which would inevitably reappear if peaceful picketing were resumed. In *Teamsters Union* v. *Morton*, 377 U.S. 252, 84 S. Ct. 1253, 12 L. Ed. 2d 280, the court appears in effect to have applied the *Youngdahl* principle and held that damages could not be awarded for lawful strike activity although

unlawful acts were indulged in by the union elsewhere. And in *United Mine Workers* v. *Gibbs,* supra, the court, in referring to *Meadowmoor,* said (p. 732): "Where the consequences of peaceful and violent conduct are separable, however, it is clear that recovery may be had only for the latter." Here again, the answer is that, in the cases before us, the court was able to determine damages based only on the tortious acts.

The plaintiff has also assigned error in the court's overruling of its claim that the burden was on the defendants to establish the allocation of losses between peaceful strike activity and unlawful strike activity. The ruling was correct. It was the plaintiff's burden to prove the damages which it claimed had resulted from the tortious acts complained of. See *Grzybowski* v. *Connecticut Co.,* 116 Conn. 292, 294, 164 A. 632.

In assessing compensatory damages the trial court took as the measure of damages the monetary value of the plaintiff's losses due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious acts which occurred. The formula used by the court to determine such damages was to arrive at (1) the monetary value of the total strike loss sustained by the plaintiff because of a deprivation of a portion of its productive labor force, (2) how long the strike would have lasted absent the illegal tortious acts, and (3) the amount of absence on the part of employees which was involuntary because of fear and coercion resulting from illegal tortious acts.

The trial court first computed the monetary value of the total damages sustained by the plaintiff because of its being deprived of a portion of its productive labor force at the Pratt & Whitney Division plants and at the Hamilton Standard Division plants. The figures arrived at were based primarily on two elements: (1) excessive manufacturing costs due to the diminution of the labor

force, and (2) unabsorbed fixed overhead expenses, referred to as "wasted overhead", due to diminution of the labor force.

The court found that the plaintiff's standard accounting system afforded an adequate and reasonable basis for computing the plaintiff's excessive manufacturing costs and wasted overhead due to the man-days of labor lost. The defendants attack this conclusion. It was enough that the court relied on evidence which showed "the extent of . . . [this item] as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555, 563, 51 S. Ct. 248, 75 L. Ed. 544; *Ball* v. *T. J. Pardy Construction Co.*, 108 Conn. 549, 551, 143 A. 855. For the same reason, it was proper for the court to rely on evidence concerning the plaintiff's manufacturing costs for the period from January to May, 1960, as a base for computing the plaintiff's excess manufacturing costs from June to August, 1960. Here again the defendants' claim of lack of exactness fails. In computing the excessive manufacturing costs the court included costs for corrective work, training, spoiled work, labor efficiency variance, premiums paid for overtime work made necessary by absent employees, and, in the case of Hamilton Standard, the cost of excessive "make or buy conversion". The defendants contested all these items. We believe, however, that the trial court properly computed excessive manufacturing costs. We believe, also, that the costs of wasted overhead as found by the trial court is supported by the evidence. In determining wasted overhead on remand, however, the overtime hours worked during the strike should be taken into account. See *Sheet Metal Workers International Assn., Local 223* v. *Atlas Sheet Metal Co.*, 384 F.2d 101, 110 (5th Cir.).

The defendants assign error in the court's ruling denying their offer to prove that the plaintiff had been reimbursed for its losses through the terms of government contracts.

The claim is without merit. Under the collateral source rule the evidence would be inadmissible. See *Lashin* v. *Corcoran,* 146 Conn. 512, 515, 152 A.2d 639. The basis of our well-established collateral source rule is that a wrongdoer shall not benefit from a windfall from an outside source. That rule is applicable in this as in any tort case.

Having arrived at a figure representing the value of the total strike damage sustained by the plaintiff due to deprivation of a portion of its productive labor force, the court next proceeded to determine the portion of this figure which represented the loss directly due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which had occurred. The court found that if the violence had not occurred, the strike would not have lasted beyond three weeks at the Pratt & Whitney plants and not more than six weeks at the Hamilton Standard plants. The court then went on to find the total number of employees at each plant prior to the strike, the number who reported to work and the number who left early on the first day of the strike, the percentage of those who failed to report for work during the first weeks of the strike because of fear or because they were unable to enter, and the percentage of involuntary absentees at the end of the strike. The court concluded that the defendants were not liable for damages for loss of man hours for the first three weeks of the strike at the Pratt & Whitney plants and for the first six weeks at Hamilton Standard; it found the mean percentage of employees who stayed out of work for the remaining period due to fear; and it applied that percentage to the plaintiff's total loss for that period and so arrived at the damages awarded.

The trial court's findings as to how long the strike would have lasted at the Pratt & Whitney plants and at the Hamilton Standard plants were based on the testimony of a labor economist offered as a witness by the plaintiff,

who gave his opinion, as an expert, as to how long the strike would have lasted at the plaintiff's plants had there been no violence. This testimony was admitted over the defendants' objection and the court's action in admitting the testimony is assigned as error by the defendants. The defendants introduced evidence through an expert witness who gave it as his opinion that it was impossible to predict the length of a nonviolent strike. The trial court specifically found that it did not believe this witness, and this is assigned as error by the defendants. We believe that the opinion of the plaintiff's witness as to how long the strike would have lasted, absent violence, was too speculative to be accorded significant weight and is not a sufficient basis for the court's finding concerning the length of the strike if violence had not occurred. See *Stephanofsky* v. *Hill*, 136 Conn. 379, 384-85, 71 A.2d 560.

It was not necessary for the trial court to attempt to estimate the length of time a nonviolent strike would have lasted. It had only to determine what damage resulted from the tortious acts. Whenever loss results to a party naturally and directly from the tortious or illegal act of another, the loss is the proper subject of judicial relief by compensation in damages. *Division 163* v. *Connecticut Co.*, 148 Conn. 563, 569, 173 A.2d 130; *Mourison* v. *Hansen*, 128 Conn. 62, 66, 20 A.2d 84. There must be a causal relation established between the tort and the damage sustained. *Robinson* v. *Southern New England Telephone* Co., 140 Conn. 414, 418, 101 A.2d 491. The trier is concerned with reasonable probabilities. *Sheiman* v. *Sheiman*, 143 Conn. 222, 225, 121 A.2d 285; *Boland* v. *Vanderbilt*, 140 Conn. 520, 525, 102 A.2d 362. And the basic aim is to compensate the plaintiff for the loss caused by the tortious conduct so far as money can do so. *Youngset, Inc.* v. *Five City Plaza, Inc.*, 156 Conn. 22, 27, 237 A.2d 366. "Where a defendant has by his wrongful conduct made the calculation of damages difficult, he will not be heard to urge such difficulty as a reason for not assessing

by approximation." *Crowell* v. *Palmer*, 134 Conn. 502, 510, 58 A.2d 729. "From the very nature of the situation, the amount of loss cannot be proved with exactitude and all that can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate." *Ball* v. *T. J. Pardy Construction Co.*, 108 Conn. 549, 551, 143 A. 855; *Collens* v. *New Canaan Water Co.*, 155 Conn. 477, 490, 234 A.2d 825; *Humphrys* v. *Beach*, 149 Conn. 14, 21, 175 A.2d 363.

Each of the actions at issue here sought damages caused by the defendants' "wilful and malicious" tortious conduct. Clearly enough the defendants had the full right to stage a strike but they had no right to participate, as the evidence established that they did, in violent and unlawful acts at the gates of and on the premises of the plaintiff's several plants. Those acts occurred from June 8 to August 8 and 9, 1960. Their effect was to reduce the number of employees who would normally have been expected to report for work and this caused substantial loss to the plaintiff. For the damage proved to have been caused to the plaintiff by those acts, the defendants should be held liable under the established rules of tort liability. In computing the monetary value of the plaintiff's strike losses at the Pratt & Whitney Division plants and Hamilton Standard Division plants due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which occurred at these plants, the trial court should, on remand, determine the amount of absence from the Pratt & Whitney Division plants which was involuntary as the result of the illegal tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960, and the amount of absence from the Hamilton Standard Division plants which was involuntary as a result of the illegal tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960. On the basis of the figures representing the

monetary value of the total strike losses sustained by the plaintiff at each of these divisions due to the loss of productive labor and the figures representing the aforementioned amount of involuntary absence the damage to which the plaintiff is entitled may be determined.

There remains the question of whether the trial court properly determined the amount of absence from the Pratt & Whitney Division plants and the Hamilton Standard Division plants which was involuntary. The court made its determination in this regard mainly on the basis of the testimony of the aforementioned labor economist who was permitted, over the defendants' objection, to state his opinion as to the percentage of the plaintiff's employees who stayed away from their employment involuntarily, and the reception of this evidence by the court is assigned as error by the defendants. While expert opinion would be relevant provided the court accorded it persuasive weight as was done in these cases, other methods of determining the element of involuntary absence of equal or greater weight might be resorted to such as a representative sampling of employees who refrained from work. The evidence to be relied on for arriving at a reasonable approximation is for the court to decide. In determining the amount of involuntary absence, however, the trial court, as we have already stated, improperly took into account absence due to fear engendered by violence and illegal acts which took place away from the plaintiff's premises as well as absence due to fear engendered by violence and illegal acts which took place at the plaintiff's plants. Only the involuntary absences due to the violence and illegal acts at the plants should be considered.

The plaintiff alleged, and the court found, that tortious illegal acts which occurred during the strike were willful and malicious. Under these circumstances, the plaintiff was entitled to recover punitive or exemplary damages in an amount which would serve to compensate the plaintiff

to the extent of its expenses of litigation less taxable costs. *Collens* v. *New Canaan Water Co.*, 155 Conn. 477, 488, 234 A.2d 825; *Triangle Sheet Metal Works* v. *Silver*, 154 Conn. 116, 127, 222 A.2d 220. The court found and awarded the legal fees and expenses exclusive of taxable costs incurred by the plaintiff in these cases including attorneys fees for successfully defending a case brought by the defendants in the federal courts seeking to enjoin the prosecution of these cases. This award was proper.

The trial court awarded interest on the sum determined as compensatory damages in each case from August 12, 1960. The defendants assign error in this action of the court. The defendants argue, however, that, since the plaintiff did not commence these actions until almost three years after August 12, 1960, interest should have been awarded only from the date of the judgment because the plaintiff was responsible for the delay. The plaintiff counters with the argument that after the actions were brought the preliminary pleading indulged in by the defendants caused delay in getting the cases to judgment.

Both arguments miss the mark for we believe the court erred in the award of interest from August 12, 1960, because it was based on an unliquidated claim. We have uniformly held interest to be allowable from the date of injury on damages resulting from tortious injury to property. *Wells Laundry & Linen Supply Co.* v. *Acme Fast Freight, Inc.*, 138 Conn. 458, 463, 85 A.2d 907; *New York N.H. & H.R. Co.* v. *Ansonia Land & Water Power Co.*, 72 Conn. 703, 705, 46 A. 157; *Regan* v. *New York & N.E.R. Co.*, 60 Conn. 124, 142, 22 A. 503. As the decisions indicate, however, such an award is limited to cases in which the damage is of a sort which could reasonably be ascertained by due inquiry and investigation on the date from which interest is awarded. Our previous discussion makes clear that the compensatory damages awarded in these cases is not of that description. Interest should have been awarded only from the date of judgments.

IV

The defendants' claim that these actions, having been brought in 1963 based upon events which occurred in 1960 are barred by the Statute of Limitations is without merit. The three-year Statute of Limitations, § 52-577, is applicable to all tort actions other than those actions carved out of § 52-577 and enumerated in § 52-584 or another section. *Collens* v. *New Canaan Water Co.*, supra, 491.

None of the other claims of the parties merit any discussion.

For the foregoing reasons we conclude that both cases must be remanded to the Superior Court solely for the purpose of reassessing the compensatory damages in accordance with this opinion.

There is error in part, the judgment is affirmed in each case except as to the amount of compensatory damages with interest awarded and a new trial is ordered in each case limited to that issue.

In this opinion the other judges concurred.

SUPREME COURT
HARTFORD COUNTY

October Term, 1969

133884

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS

133885

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS

Defendants' Motion for Reargument

May 11, 1971.

The motion by the defendants to reargue is denied.

By the Court,

ALCORN
Chief Justice

SUPREME COURT OF CONNECTICUT
OFFICE OF THE REPORTER OF JUDICIAL DECISIONS

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11 May 1971

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Re: *United Aircraft Corporation* v. *International Association of Machinists, et al.*, No. 6646

Gentlemen:

Please be advised that the opinion in the above-captioned matter has been amended.

The following paragraph . . .

> "The court found that the plaintiff had sustained substantial damage, but, as we have stated, the amount thereof must be recomputed because the court allowed the plaintiff nothing for acts which occurred in the period during which it found that a nonviolent strike might have lasted and did award damages arising from events which occurred off the plaintiff's premises. For the foregoing reasons we conclude that both cases must be remanded to the Superior Court solely for the purpose of reassessing the compensatory damages in acordance with this opinion." . . .

has been substituted for the first paragraph on page eleven, column one, of the Connecticut Law Journal (Vol. 32, No. 43) dated 27 April, 1971.

Very truly yours,

DONALD H. DOWLING
Donald H. Dowling

DHD:mhw

Defendants' Motion for Stay of Execution Pending Action on Writ of Certiorari

SUPREME COURT
HARTFORD COUNTY

OCTOBER 1969 TERM

No. 6646

133884, UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET ALS.

133885, UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET ALS.

June 2, 1971. The motion by the defendants for a stay of execution of the judgment in the appeal from the Superior Court in Hartford County is granted.

By the Court,

THIM
Acting Chief Justice

NORMON ZOLOT, ESQ.
9 Washington Avenue
Hamden, Connecticut

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL.,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL.,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

International Association of Machinists and Aerospace Workers (AFL-CIO), its District Lodge No. 91, and its Local Lodges Nos. 743 and 1746 pray that a writ of certiorari issue to review the judgment of the Supreme Court of Connecticut in this case.

OPINIONS BELOW

The opinions of the Superior Court are not reported. They are reprinted in the separate Appendix to this Petition ("A.") at pp. 1-27 (pre-trial memoranda), 29-55 (decision on liability) and 56-64 (decision on damages). The decision of the Supreme Court of Connecticut is not yet officially reported. It is reprinted at A. 65-89, amended at A. 91.

JURISDICTION

The decision of the Supreme Court of Connecticut was entered on April 27, 1971. A timely motion for reargument was denied on May 11, 1971 (A. 90). On August 10, 1971, Mr. Justice Harlan extended the time for filing this petition to October 6, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). There is a substantial question whether the judgment below is "final" for purposes of that section; that question is fully discussed at pp. 9-13, *infra*.

QUESTION PRESENTED

May a state court award punitive damages in an action based on violence committed during a strike for a collective bargaining agreement against an employer subject to the National Labor Relations Act, 49 Stat. 449 *et seq.*, 61 Stat. 136 *et seq.*, 29 U.S.C. § 141 *et seq.* ("the Act") where:

(a) The action is brought to coerce the defendant union to withdraw unfair labor practice charges before the National Labor Relations Board and an action under § 301(a) of the Act in a United States District Court;

(b) Compensatory damages have not been established; and

(c) The punitive damages include plaintiff's expenses in litigation of matters on which plaintiff did not prevail ?

STATUTE INVOLVED

This case involves §§ 7, 8(a)(1), 10(a), 10(b), and 301(a) of the Act. These provisions are reprinted at pp. 23-24, *infra*.

STATEMENT OF THE CASE

1. THE FACTUAL BACKGROUND.

This case arises out of two separate, consolidated actions by respondent United Aircraft Corp. (hereafter referred to as "the Company" or "the employer") for damages allegedly caused by violence in a strike by defendant Unions against the company. Respondent is engaged in the manufacture of airplane engines and parts at several plants in Connecticut, including plants at East Hartford and Manchester (in the Pratt & Whitney Division) where the employees are represented by Local Lodge 1746, and at Windsor Locks and Broad Brook (in the Hamilton Standard Division) where the employees are represented by Local Lodge 743. The Local Lodges are affiliates of the International Association of Machinists (hereinafter referred to as "the International"), and of its District Lodge 91. Respondent is an "employer engaged in commerce" and petitioners are "labor organizations" subject to the National Labor Relations Act.

For many years prior to 1960, plaintiff and the respective Local Lodges were parties to collective bargaining agreements. The Lodge 1746 agreement expired on December 7, 1959, and the Lodge 743 agreement expired on April 21, 1960. A strike at the plants started June 8, 1960, and ended August 11, 1960. (A. 30, 32).

While the record in this case is lengthy, the facts necessary for an understanding of the issues presented by this Petition, and of its procedural posture, can be stated in brief compass.

In the course of the first days of the strike (from June 8-13), the strikers engaged in mass picketing in front of the entrances to the employer's plants as well as assorted other acts of misconduct directed at indi-

vidual strikers. On June 13 the state court approved and entered a stipulation prohibiting mass picketing and violence, but allowing picketing to continue. On June 16 a similar stipulation was entered by the federal court at the instance of the National Labor Relations Board in a suit under § 10(j) of the Act. These stipulations limited the number of pickets and prohibited tortious conduct on the picket lines (state court) and also off the picket lines (federal court). Announcement of the stipulations brought an immediate end to the mass picketing and misconduct on the picket lines. (A. 48). Approximately fifteen isolated and sporadic incidents of misconduct, each directed against only one individual, were found to have occurred around plant entrances in the eight week period between the stipulations and the end of the strike.

2. PROCEEDINGS BELOW.

A. The Complaints and Proceedings Before Trial

Respondent filed separate complaints in the Superior Court of Connecticut against the Unions, charging them with injury to its property by strike violence. One complaint involved the strike at Pratt & Whitney and prayed for $10,000,000 in compensatory damages; the second made identical allegations with respect to the strike at the Windsor Locks and Broad Brook plants in its Hamilton Standard Division and prayed for $5,000,000 in compensatory damages. Both complaints additionally sought exemplary damages.

The Unions filed pleas in abatement which alleged, *inter alia*, that the state courts lacked jurisdiction over the complaints because their filing constituted an unfair labor practice under the National Labor Relations Act. It was the theory of this defense that the purpose of the complaints was to coerce the unions into with-

drawing charges which had been filed before the National Labor Relations Board, and to dismiss a civil action under § 301 of the Act which they had brought in the United States District Court for the District of Connecticut.[1] These same grounds were asserted as special defenses to the complaint. The Superior Court sustained defendants' demurrers to the pleas in abatement and to the special defenses. (A. 1-28; on this issue see A. 3-5, 7-10, 23).

B. The Decisions at the Liability and Damage Trials.

The complaints were consolidated for trial before Gaffney, J. Separate trials were held on liability and damages. Since the present Petition is not addressed to the propriety of the liability findings, it suffices to state the trial court's conclusions. That court determined that tortious acts of violence had been committed during the strike and that the Unions were responsible therefor. Although the Unions had entered into a state court stipulation against violence on June 13, the Court held that their responsibility for subsequent tortious conduct continued.[2]

---

[1] The major thrust of both proceedings was that the company had denied the strikers the reinstatement right to which they were entitled under the Act and the strike settlement agreement. NLRB Cases 1-CA-3355 *et al.*; U.S.D.C. Conn. Cases 9084, 9085. Both the Board and the District Court ultimately resolved these issues in the Company's favor. *United Aircraft Corp.*, 192 NLRB No. 62 (July 30, 1971); *Lodge 743, Int. Ass'n of Machinists* v. *United Aircraft Corp.*, 299 F.Supp. 877 (D.C. Conn.). Review of both decisions will be sought when the District Court decision becomes final.

[2] The Court did this on the following reasoning:

> "This illegal activity on the picket lines ceased abruptly the moment the stipulation was agreed upon and approved by the court. Thereafter, however, hundreds of complaints of harassment were made to company officials. These in-

After another lengthy trial, the Court found that the company had suffered strike losses caused by the Unions' tortious conduct of $1,369,726.25 at Pratt & Whitney, and $88,662.00 at Hamilton Standard (A. 62-63). The theory on which the Court found that plaintiff had suffered almost $1.5 million of actual damages was that defendants' actions had caused involuntary absenteeism and that this involuntary absenteeism in turn had caused excessive manufacturing costs and wasted overhead.[3]

The trial court also allowed exemplary damages of $296,000 based on plaintiff's costs of litigation. (A. 63).[4]

C. The Decision of the Connecticut Supreme Court.

On appeals by both sides—the Company claiming that the trial court's judgments were inadequate—the

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cluded damage to personal property, autos, threats, obscenities and vituperations. The complaints continued until the end of the strike August 11, 1960." (A. 48)

Compare the Supreme Court's opinion reversing on this issue, A. 79-80.

[3] The company's claim that it was entitled to recover for losses due to involuntary absenteeism was an alternative to the even more sweeping assertion that it should be permitted to recover its entire "strike loss" from defendants. Plaintiff advanced two thories: (1) Violence and threats of violence so permeated the strike that they transformed it from a lawful one into an unlawful one; (2) Because the unions were weak, they would not have undertaken to strike unless they had relied upon illegal mass picketing, violence and threats of violence to enhance its effectiveness; this inferred plan to resort to unlawful conduct, according to plaintiff, illegalized the strike. The trial court rejected both theories (A. 61). The Court also refused to accept one variant of plaintiff's involuntary absentee theory, namely, that since the strikes would have terminated but for the tortious conduct, plaintiff was entitled to recover all the loss attributable to its continuation. (*Id.*)

[4] The Court allocated ⅔ of these exemplary damages to the Pratt & Whitney case and ⅓ to the Hamilton Standard case.

Connecticut Supreme Court entered the following order:

> "There is error in part, the judgment is affirmed in each case except as to the amount of compensatory damages with interest awarded and a new trial is ordered in each case limited to that issue." (A. 89)

The court reasoned that the Unions' liability for violence in front of plaintiff's plants, both before and after the June 13, 1960, stipulation, was adequately established. (A. 68-79). However, the court reversed the determinations of liability for incidents away from the plant. (A. 79-80). Because of the importance of those incidents, which could not be charged to the Unions, in the trial court's calculation of plaintiff's damages (A. 80, 84-87), and because of evidentiary errors which need not be detailed (*ibid*), the Connecticut Supreme Court held that the amount of compensatory damages would have to be retried and redetermined. In this retrial, defendant unions would be entitled to credit which the trial court had denied them, for the overtime hours worked during the strike against "wasted overhead" (A. 83). Despite all this, however, the Supreme Court affirmed the award of punitive damages. As to that issue the Court said (A. 87-88):

> "The plaintiff alleged, and the court found, that tortious illegal acts which occurred during the strike were wilful and malicious. Under these circumstances, the plaintiff was entitled to recover punitive or exemplary damages in an amount which would serve to compensate the plaintiff to the extent of its expenses of litigation less taxable costs."

The Court also rejected the Unions' objections to state court jurisdiction. (A. 67-68).

Thereupon, the Unions filed a timely motion for reargument addressed solely to the issue of punitive damages as it appeared in the light of the Supreme Court's reversal of the award of compensatory damages. The Unions urged that since the punitive damages were almost $300,000, and the amount, *if any,* of provable compensatory damages was unknown, the judgment for punitive damages should be set aside to be redetermined in light of the outcome of the proceedings on remand. Three grounds were stated:

(1) The Connecticut Supreme Court had never decided the important question of what relationship an award of punitive damages must have under Connecticut law to damages actually proven. This is an issue as to which there is a multiplicity of views among the states. See p. 18, *infra.* Defendants had a due process right to be heard on what the rule should be; the most appropriate time would be after the new trial on compensatory damages, unless these were found to be so great that the issue would be irrelevant.

(2) The award of punitive damages at a time when compensatory damages had not been established was contrary to federal law (citing *Linn* v. *United Plant Guard Workers,* 383 U.S. 53).

(3) It would be fundamentally unfair and contrary to federal law to require defendants to pay, in the form of punitive damages, *plaintiff's* costs of litigation of issues on which plaintiff did *not* prevail.

Alternatively, the Unions urged that if the Court were of the opinion that the award for punitive damages should not be set aside, it should modify its judg-

ment by reserving its own jurisdiction to alter that award after the proceedings on remand. It was pointed out that the finality of the state court's judgment for purposes of 28 U.S.C. § 1257 was in doubt, and that the unions would therefore be compelled to file an immediate Petition for Certiorari to review the punitive damage award lest a Petition filed after completion of all proceedings in the state courts be dismissed as untimely. The Unions said: "An order which makes clear that the entire judgment is subject to revision in this Court would relieve defendants of this dilemma, and would eliminate the burden of piecemeal application for and piecemeal review by the Supreme Court." (Motion for Reargument p. 5).

The Connecticut Supreme Court denied the motion for reargument. (A. 90). On the same day, however, it amended its opinion, adding the following sentence in the next to last paragraph thereof:

> "The court found that the plaintiff had sustained substantial damage, but, as we have stated, the amount thereof must be recomputed because the court allowed the plaintiff nothing for acts which occurred in the period during which it found that a nonviolent strike might have lasted and did award damages arising from events which occurred off the plaintiff's premises." (A. 91)

THE FINALITY OF THE STATE COURT JUDGMENT IS IN DOUBT

At the outset of our discussion of the problem of jurisdiction we wish to make clear that we seek certiorari at this time only out of an abundance of caution because this Court's decisions appear to place upon a party seeking review of a state court judgment the duty to do so *at the right time*. If a party fails to file at the

first opportunity on the assumption that the judgment lacks finality, and that view is mistaken, his petition from a subsequent judgment may be dismissed as untimely. See *Parker* v. *Illinois,* 333 U.S. 571. For this reason leading commentators have recommended that review be sought on the first occasion where the state court's judgment *may* be considered final, and then again from a subsequent judgment.[5]

In the present case, the question of finality is very much in doubt: under this Court's more recent decisions the judgment below appears to be final, but under earlier precedent, which has not been expressly disapproved, it would not be. Thus, petitioners invoke this Court's jurisdiction now, lest the opportunity for review of this large judgment be deemed abandoned. In view of our own doubts on the matter, and cognizant of the responsibility of counsel with respect to jurisdictional issues, we shall outline the competing considerations.

Diligent research has uncovered no case in which this Court has determined whether a state court judgment for an amount of money, subject to immediate execution, is "final" when further state court proceedings remain open to determine whether the plaintiff shall be awarded an additional amount. But recent decisions of this Court appear to indicate, by analogy, that such a judgment is indeed "final." Last term in *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415, 418, n. 4, a temporary injunction against the dis-

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[5] Stern and Gressman, *Supreme Court Practice,* 103 (4th ed., 1969). That, too, is the course which was followed in *Market Street Railroad Co.* v. *State Railroad Commission,* 324 U.S. 548, 549-550, by Francis R. Kirkham, Esq., a co-author of what was then the leading treatise on this Court's jurisdiction.

tribution of leaflets was held to be "final" notwithstanding the pendency of state court proceedings to determine whether the injunction would be made permanent. *Keefe* followed *Local No. 438* v. *Curry,* 371 U.S. 542, and *Hudson Distributors Inc.* v. *Eli Lilly and Co.,* 377 U.S. 386. *Curry,* like *Keefe,* granted review of a preliminary injunction.[6] In *Hudson Distributors* this Court held final the reversal by the Ohio Supreme Court of a declaratory judgment (obtained by Hudson) that an Ohio statute was unconstitutional where the reversal was joined with a remand for further proceedings on Lilly's cross-claim for injunctive relief. These cases taken together would appear to support the proposition that a judgment is "final" when it finally determines that a party is or is not entitled to a particular form of relief, even though proceedings remain in the state courts with respect to additional or different kinds of relief. On that view, then, the judgment below was indeed "final."[7]

These more recent decisions differ in approach, though they do not purport to overrule, more restrictive views of finality embodied in such cases as *Republic Natural Gas Co.* v. *Oklahoma,* 334 U.S. 62. There, a divided court held to be non-final a judgment which affirmed an administrative order requiring the petitioner to take gas ratably from a particular producer, but leaving open for later determination the terms

[6] In that type of situation failure to grant immediate review would "effectively dispose of petitioner's rights and render entirely illusory his right to review here * * *." (371 U.S., at 550).

[7] Two other recent cases which take an expansive approach to finality are *California* v. *Stewart,* 383 U.S. 903, and *Mills* v. *Alabama,* 384 U.S. 214. However, the grounds on which jurisdiction was asserted in those cases appear to have no bearing on the present problem.

upon which the petitioner must do so. In the course of a thorough discussion of the standards for determining finality, Mr. Justice Frankfurter made two observations which appear to cut sharply against the finality of the judgment in the present case. First, he said:

> "Merely because a party to a litigation may be temporarily out of pocket, is not sufficient to warrant immediate review of an incomplete State judgment." 334 U.S., at 70.

The precise effect of the judgment below is to require petitioners to pay the company about $300,000; if that judgment is ultimately reversed, after all state court proceedings are completed, petitioners will have been "temporarily out of pocket."[8] The second observation made by Justice Frankfurter which particularly bears on the present case is that this Court "ought not to pass on constitutional issues before they have reached a definite stop." *Id.* at 71. One of the issues in this case is the relationship between punitive and compensatory damages in suits for strike violence. In that connection it is noteworthy that the absence of finality the *Republic* case was predicated in part on the possibility that the posture of the constitutional issues "may well be affected by the fate of the unresolved contingencies of the litigation." *Id.* at 71. This is equally true here, for one of the federal claims raised by the present Petition—a plaintiff may not be awarded punitive damages unless he has been awarded compensatory

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[8] The situation would be otherwise if respondent's solvency were in doubt. In that event, petitioners might "be irreparably injured if review were unavailing." 334 U.S. at 68. Where the injury is irreparable the judgment is considered final. *Ibid.* The *Curry* line may be reconcilable with *Republic* on this basis. See p. 11, n.6, *supra*.

damages—would be mooted if the Company were to establish substantial compensatory damages on remand. On the other hand, if the respondent were to be awarded none or insubstantial compensatory damages, the Connecticut Supreme Court might choose to alter its own decision. Failing that, the question we present here would emerge in sharpest focus.

The short of the matter is that the present case appears to implicate several of the elements which this Court has deemed relevant in determining whether a state court judgment is final for the purpose of 28 U.S.C. § 1257. The Court may therefore wish to grant certiorari to allow plenary consideration of the finality issue and to clarify what is presently a cloudy area of this Court's jurisdiction. Of course, the necessity for petitioners to file, and for this Court to consider, the present Petition would have been avoided if the court below had, as we urged, reserved jurisdiction to alter the exemplary damage award. Compare *NAACP* v. *Williams,* 359 U.S. 550.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS SUBSTANTIAL AND IMPORTANT QUESTIONS CONCERNING THE SCOPE OF THE LABURNUM-RUSSELL DOCTRINE.

In *United Construction Workers* v. *Laburnum Corp.,* 347 U.S. 656, and *Auto Workers* v. *Russell,* 356 U.S. 634, this Court held that state courts may entertain suits against labor unions for damages arising out of strike violence, and may award punitive damages to the successful plaintiff. The court below treated those decisions as having disposed of all questions concerning state court jurisdiction over such suits and affirmed an enormous judgment for punitive damages although the fact and amount of actual damages suffered by plaintiff

have not been finally determined. Because of its exaggerated view of the *Laburnum-Russell* precedents the court failed to heed other decisions of this Court which restrict the use of private litigation to impair the exercise of federally-created rights. Thus, the present case raises substantial and important questions concerning the scope and limitations of the *Laburnum-Russell* doctrine.

A. The Court Below Was Without Jurisdiction Because the Present Suit Is a Weapon of Economic Coercion To Chill the Exercise of Federal Statutory Rights.

Petitioners have insisted from the outset that the state courts were without jurisdiction to entertain the present suits because these were brought by the company to coerce the unions to abandon charges brought under § 10(b) of the Act before the National Labor Relations Board, and a suit under § 301 of the Act alleging that the company had violated the strikers' statutory and contractual reinstatement rights. The court below acknowledged it to be our position (A. 68), in reliance on *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 64, that "federal law prohibits employers from using state court damage suits, predicated on strike misconduct, as 'weapons of economic coercion' ". The Court rejected this argument as follows (A. 68):

> "The assertion of the accepted right to bring a state court action for damages arising from tortious conduct, as in the present cases, does not come within the ambit of the proposition stated even if the case relied on supported it." *Ibid.*

This explanation is tantamount to a refusal to follow the authority of *Linn.* For this Court there dealt precisely with the "right to bring a state court action for

damages arising from tortious conduct" (*ibid.*), and, while vindicating that right, recognized that it must be qualified lest such suits become "weapons of economic coercion" to impede the exercise of *federal* rights.

The proposition that state courts may not entertain suits, the objective of which is to compel the defendant to withdraw unfair labor practice charges, is so clear that it can be stated in the form of a syllogism:

1. A state may not take action which impedes a party's right to access to the National Labor Relations Board. *Nash* v. *Florida Industrial Commission,* 389 U.S. 235, 238; cf. *NLRB* v. *Marine Workers,* 391 U.S. 418, 424.[9]

2. The assertion by a state court of jurisdiction over a damage suit and the entry of judgment therein is a form of state action which cannot be utilized to thwart federal objectives. *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 64-66; *New York Times* v. *Sullivan,* 376 U.S. 254, 265, 279-280; *Farmers Educational & Coop. Union* v. *WDAY, Inc.,* 360 U.S. 525, 535; *Barrows* v. *Jackson,* 346 U.S. 249, 254.

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[9] In *Nash* the Court said: "Congress has made it clear that it wishes all persons with information about [unfair labor] practices to be completely free from coercion against reporting them to the Board." 389 U.S., at 238. The Court held that a state may not deny unemployment compensation to a person because he filed a charge with the Labor Board; such denial "has a direct tendency to frustrate the purpose of Congress to leave people free to make charges of unfair labor practices to the Board." *Id.* This congressional policy was reaffirmed in *NLRB* v. *Marine Workers,* 391 U.S. 418, 424, which held that a union had violated the Act by disciplining a member for filing a charge with the Board without exhausting internal union remedies; the union rule which was there denied effect did not entirely foreclose, but merely delayed, access to the Board. How much greater is the "financial burden" (*Nash,* 389 U.S. at 239) imposed by the present actions where plaintiffs prayed for judgments totalling $15,000,000 *plus* punitive damages!

3. *Ergo,* a state court is without power to entertain and award damages in a suit whose objective is to impede access to the Board.

The identical reasoning, of course, leads to the same result where the state court suit also seeks to compel withdrawal of a § 301 suit. For the right to vindicate federal claims in federal court is likewise protected by the Supremacy Clause from interference by state courts. See *e.g., Donovan* v. *Dallas,* 377 U.S. 408, 412-413; cf. *Brotherhood of Railway Trainmen* v. *Virginia,* 377 U.S. 1, 7.

B. Punitive Damages Cannot Be Awarded to a Party Who Has Not Established Actual Damages.

As this case now stands, the company has obtained an award of about $300,000 of punitive damages without establishing a penny of actual damages. This raises the question whether state courts may award punitive damages in a tort suit based on strike violence to a plaintiff who has thus far not proven any actual damages therefrom. Here again we submit that the issue is controlled by *Linn* v. *United Plant Guard Workers,* 383 U.S. 53. For there this Court squarely held (*id.* at 66):

> "the defamed party must establish that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages.[8]

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[8] It should be noted that punitive damages were awarded in *Laburnum* and *Russell.* In both instances there was proof of compensatory injury resulting from the defendants' violence."

Thus, even as *Linn* allowed a defamation suit by analogy to *Laburnum* (*id.* at 61-62, 64, n. 6) it rejected,

on the authority of that case, the suggestion that punitive damages not be allowed.[10] But even as the right to sue was qualified in order that it not become a weapon of economic coercion, so the right to collect punitive damages was conditioned on prior proof of compensatory damages. Thus, while this Court has not yet said in so many words that punitive damages can be obtained in a suit based on strike violence only if there is an award of actual damages, that conclusion clearly follows from what was decided in *Linn,* particularly since the Court took pains to note that there had been "proof of compensatory injury from the defendants' violence" in *Laburnum* and *Russell.*

Here again no principled distinction suggests itself between tort suits for defamation situations and those based on strike violence. For none of the state interests which have been held to justify private suits for strike violence, notwithstanding the availability of Labor Board remedies, require that parties who do not establish actual damages be allowed to recover punitive damages. Private suits by parties who do show damages, and criminal and injunctive proceedings brought by the state itself, provide an ample arsenal of remedial weapons to vindicate "the compelling state interest in the scheme of our federalism in the maintenance of domestic peace." *San Diego Unions* v. *Garmon,* 359 U.S. 236, 247. And, of course, to the extent that the *Laburnum-Russell* doctrine rests on the importance of affording a remedy for private injury, it does not justify a recovery by one who does not show such injury. On the contrary, to allow recovery would be inconsistent with the prior decisions of this Court

[10] Brief for the National Labor Relations Board, No. 45, Oct. Term, 1965, pp. 46-47.

involving "the right of states to deal with violence and threats of violence appearing in labor disputes" (*Mine Workers* v. *Gibbs*, 383 U.S. 717, 729) for, as this Court said in *Gibbs:*

> "Our opinions on this subject, frequently announced over weighty arguments in dissent that state remedies were being given too broad scope, have approved only remedies carefully limited to the protection of the compelling state interest in the maintenance of domestic peace." *Id.* at 729-730.

In our view, the proper accommodation of federal and state interests requires yet a further clarification of the availability of punitive damages: If these are to be retained they must bear some reasonable relation to the actual injury. Cf. *Rosenbloom* v. *Metromedia*, 403 U.S. 29, 72-78 (opinion of Harlan, J.), 82-87 (opinion of Marshall, J.)[11] On this premise, if on retrial, plaintiff proves little compensatory damage compared to the size of the punitive damages awarded, we would argue that the punitive damages are excessive. At this point, however, when plaintiff has not yet proven *any* compensatory damages, *Linn* plainly requires reversal of the punitive damage award.

C. Federal Law Does Not Allow Charging Defendants With All of Plaintiff's Litigation Costs.

The punitive damages in this case were determined, in accordance with Connecticut law, on the basis of plaintiff's total litigation costs. In the ordinary case where the plaintiff prevails on all the major litigated

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[11] This is the view of the majority of states that have passed on the issue. See *Anno.* 17 A.L.R. 2d 527. If certiorari is granted, we shall also urge on this point that the court below denied petitioners due process by refusing to decide this issue as a matter of state law. See p. 8, *supra.*

issues, this measure of damages is not unreasonable, and indeed may be sounder than leaving the trier of fact at large to arrive at some amount without any objective standards. But in a case where the plaintiff is not entirely successful, the rule has anomalous results: it places the defendant at his adversary's mercy, for it permits the plaintiff to "vastly increase the fee burden on a defendant by pursuing a plethora of unsubstantial claims." *Farmington Dowel Products Co.* v. *Forster Mfg. Co.*, 421 F. 2d 61, 92 (C.A. 1). A rule which allows one party to play "heads I win, tails you lose" in this manner is far too arbitrary to accord with due process of law even where the defendant has committed a tort and the award goes under the rubric of "punitive damages." And where it imposes damages on the party who has successfully litigated a *federal* issue it places a burden on the exercise of a federal right which this Court should not tolerate. Yet that is precisely the effect of the judgment below.[12]

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[12] For example, under *Mine Workers* v. *Gibbs*, *supra*, defendants had a federal right not to be mulcted for damages exceeding those which plaintiff could establish to have been proximately caused by violence. The damage trial was devoted to that issue. The judgment below awards plaintiff $37,000 for expenses which the findings show to have been incurred by plaintiff solely in connection with the damage trial (Findings 753, 754, 756; Record 309-310); it also awards $150,000 in attorneys' fees and $64,500 for time spent by plaintiff's personnel, much of which must be attributed to the damage trial (Findings 747, 749, 755; Record 308-310). Yet the outcome of that damage trial was nullified by the State Supreme Court. Similarly, the attorneys' fees and the expenses of plaintiff's personnel include appearances during the many days of the liability trial which resulted in the findings which were ultimately reversed on the Unions' appeal. Indeed, the judgment below requires defendants to pay plaintiff for the time spent in Court by its witness Morse, whose testimony was objected to as hearsay and the admission of which was a major ground for reversal (A. 80).

This Court has recognized that parties may be discouraged from good faith litigation even by the risk of having to pay their adversary's costs when they lose. See *Farmer* v. *Arabian American Oil Co.*, 379 U.S. 227, 235. That inhibition is, of course, far more drastic where the party must bear the cost of litigating major issues regardless of the outcome. And so, under those statutory schemes which do allow the prevailing party to recover expenses, the federal courts have carefully molded their relief to avoid such consequences, most recently in *Farmington Dowel Products Co.* v. *Forster Mfg. Co.*, 421 F. 2d 61, 91-92, where Judge Coffin lucidly set forth the governing considerations. See also *Bergjans Farm Dairy Co.* v. *Sanitary Milk Producers*, 241 F. Supp. 476, 489 (E.D. Mo.), *aff'd*, 368 F. 2d 679 (C.A. 8); *Union Leader Corp.* v. *Newspapers of New England, Inc.*, 218 F. Supp. 490, 492 (D. Mass.), *rev'd on other grounds, Haverhill Gazette Co.* v. *Union Leader Corp.*, 333 F. 2d 798 (C.A. 1); *Osborn* v. *Sinclair Refining Co.*, 207 F. Supp. 856, 864 (D. Md.), *rev'd on other grounds*, 324 F. 2d 566 (C.A. 4).

When this Court authorized punitive damage awards in *Laburnum* and *Russell* it did not remotely contemplate that such awards would penalize the exercise of the constitutional right to defend, particularly to the extent that such defense was successful. Rather, as we already have shown, it restricted the remedy to the protection of "compelling state interests." See p. 18, *supra*, quoting from *Gibbs*, 383 U.S., at 729. The decision below is so fundamentally unfair, and so out of harmony with other federal decisions dealing with the litigation costs recoverable by plaintiffs, that it ought not stand.

CONCLUSION

By reason of the foregoing this Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX

Statutory Provisions Involved

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the

Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

* * * * * * *

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-495

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), *et al.*,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

Opinions Below

The memorandum of decision of the Superior Court on liability is reported unofficially at 68 L.R.R.M. 2488, 58 CCH Lab. Cas. ¶51,930, and its memorandum of decision on damages is reported unofficially at 70 L.R.R.M. 2577, 59 CCH Lab. Cas. ¶52,043. The opinion of the Supreme Court of Connecticut is reported unofficially at 77 L.R.R.M. 2436, 66 CCH Lab. Cas. ¶52,602, but without the Supreme Court's amendment which appears on page 91a of Petitioners' Appendix.

Jurisdiction

The judgment below is not "final" within the meaning of 28 U.S.C. §1257, as is obvious not only from the discussion at pages 9-13 of the petition but also from the discussion herein at pages 5-7. Parts (b) and (c) of the claimed federal question set out on page 2 of the petition were never raised as federal questions in the court below, as is apparent from Defendants' Motion for Reargument (pp. 16-21 *infra*) and the discussion at page 7 herein.

Question Presented

Parts (a) and (b) of petitioners' asserted "Question Presented" are not presented by the facts of the case, as discussed at pages 8-10 herein.

Counterstatement of Case

This is a frivolous petition! Wholly apart from the obvious absence of finality to the judgment below and petitioners' failure to raise below as federal questions parts of the question sought to be raised here, the petition seeks to obtain review of such judgment by this Court on the basis of issues which clearly are not presented by the case.

The two actions consolidated in the Connecticut courts are strictly common law actions claiming damages resulting from intentional torts. The judgments below were bottomed squarely on findings[1] that such causes of action had been overwhelmingly proved. Petitioners have failed

[1] The findings and not the memorandum of decision are the basis for appellate review under Connecticut law: "The only available source of facts on any appeal is the finding as provided for by statute." *Munson v. Atwood*, 108 Conn. 285, 290 (1928); "The memorandum of decision establishes no facts and cannot take the place of the finding, which is essential to test rulings on evidence and conclusions of law or fact drawn by the trier. . . ." *Saraceno* v. *Capitol Theatre Realty Corp.*, 154 Conn. 669, 672 (1967).

to print in their appendix these findings of the trial court; they chose not even to print the finding which squarely found their primary claim here to be without basis in fact.[2] They also failed to file the printed record which contains the trial court's findings (Record, pp. 183-313); respondent has subsequently caused the record to be filed. Even the most cursory examination of the detailed and careful findings of the trial court (Record, pp. 183-244) clearly establishes that the conclusion that petitioners intentionally engaged in the illegal activities for which they were held responsible was the only possible conclusion that could have been reached by any court. The Connecticut Supreme Court, after concluding that the findings pertinent to petitioners' jurisdictional claims were fully supported, held:

> "Based on the doctrine of federal preemption, the defendants assign error in the court's refusal to dismiss both actions on jurisdictional grounds. There is no denying the fact that the jurisdiction of the state courts over labor disputes has been greatly restricted by the passage of the Labor Management Relations Act, 1947, and the establishment of the Labor Management Relations Board. The complaints in these actions alleged in substance, however, that, while the plaintiff was negotiating collective bargaining agreements with Lodge 1746 and Lodge 743, all of the defendants joined in concerted and unlawful mass picketing, personal violence, invective and intimidation with the wilful and malicious purpose of coercing and preventing persons from entering the plaintiff's premises as a result of which the

[2] Finding 778 (Record, p. 312) reads: "At no time from the period of the strike to the institution of these actions or thereafter did plaintiff waive its claim for damages, nor condone the unlawful acts of the defendants, *nor use these cases or the threat thereof to induce the defendants to withdraw their claims in pending litigation,* and plaintiff is not estopped to assert the claims made in these cases." (emphasis added)

plaintiff suffered severe financial damage. It is well established that state courts have jurisdiction over such tort actions." (Appendix, pp. 67a-68a).

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"Each of the actions at issue here sought damages caused by the defendants' 'wilful and malicious' tortious conduct. Clearly enough the defendants had the full right to stage a strike but they had no right to participate, as the evidence established that they did, in violent and unlawful acts at the gates of and on the premises of the plaintiff's several plants. Those acts occurred from June 8 to August 8 and 9, 1960. Their effect was to reduce the number of employees who would normally have been expected to report for work and this caused substantial loss to the plaintiff. For the damage proved to have been caused to the plaintiff by those acts, the defendants should be held liable under the established rules of tort liability." (Appendix, p. 86a).

During the damage trial respondent proved substantial damages resulting from involuntary absences of employees commencing from the first day of the strike. Once again, the trial judge made extensive findings with respect to the facts in issue (Record, pp. 248-308). However, the trial judge, based on an erroneous conception of how damages should be computed under Connecticut law, disallowed all damages resulting from absences during the period a nonviolent strike would have lasted. Because such misconception denied respondent recovery for substantial damages which clearly had been proved, respondent requested review of the amounts of the judgments awarded by the trial court. Upon review, the Connecticut Supreme Court ordered a new trial as to the damage awards, specifically instructing the trial court to determine the amount of involuntary absences and resulting damages for the entire

period of the strike. Petitioners also appealed. The Connecticut Supreme Court rejected most of their numerous claims of error, but it did direct that in recomputing damages the trial court should exclude damages resulting from acts away from plaintiff's premises and should give credit for overtime worked during the strike. Contrary to petitioners' implication, it is clear that the intent and result of the Supreme Court decision will be to increase the amounts of the judgments. The exemplary damages awarded having been computed in accordance with the Connecticut rule, that aspect of the judgments of the trial court was affirmed in the following language:

> "The plaintiff alleged, and the court found, that tortious illegal acts which occurred during the strike were wilful and malicious. Under these circumstances, the plaintiff was entitled to recover punitive or exemplary damages in an amount which would serve to compensate the plaintiff to the extent of its expenses of litigation less taxable costs." (Appendix, pp. 87a-88a).

A further trial on the limited issues with respect to damages as specified by the Connecticut Supreme Court awaits disposition of this petition.

Reasons for Denying the Petition

A. The Decision Below Is Not Final.

Under *Republic Natural Gas Co.* v. *Oklahoma,* 334 U.S. 62 (1948), it is clear that the judgment below is not final within the meaning of 28 U.S.C. § 1257. Petitioners' discussion of the finality question (Petition, pp. 9-13) recognizes this and practically invites this Court to deny the petition on that ground.[3]

[3] See also the discussion in their Motion for Reargument (pp. 19-20 *infra*).

Petitioners justify their petition by the statement that "this Court's decisions appear to place upon a party seeking review of a state court judgment the duty to do so *at the right time*" (Petition, p. 9), and go on to cite *Parker* v. *Illinois*, 333 U.S. 571 (1948), and to discuss *Local No. 438* v. *Curry*, 371 U.S. 542 (1963), and later cases. But neither *Curry* nor what they refer to as the *"Curry* line" suggests that later review of those decisions would have been untimely. In *Curry* this Court held a determination of jurisdiction by the Georgia Supreme Court to be final for purposes of review, even though the case was remanded for issuance of a temporary injunction and further proceedings in connection with a permanent injunction. However, this Court went on to say, "If the permanent injunction issues, petitioner could then come here seeking the doubtful privilege of relitigating the entire matter before the National Labor Relations Board", 371 U.S. at 550, thereby indicating that the same question would have been reviewable upon determination of the entire case below. Similarly, in *Mills* v. *Alabama*, 384 U.S. 214, 217 (1966), this Court said:

> "Thus if the case goes back to the trial court, the trial, so far as this record shows, would be no more than a few formal gestures leading inexorably towards a conviction, and then another appeal to the Alabama Supreme Court for it formally to repeat its rejection of Mills' constitutional contentions whereupon the case could then once more wind its weary way back to us as a judgment unquestionably final and appealable."

In neither *Organization for a Better Austin* v. *Keefe*, 402 U.S. 415 (1971), nor *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386 (1964), is there any indication that review could not have been had later.

This Court's statement in *Radio Station WOW, Inc.* v. *Johnson,* 326 U.S. 120, 127 (1945), that "where the remaining litigation may raise other federal questions that may later come here, . . . to allow review of an intermediate adjudication would offend the decisive objection to fragmentary reviews", has application here. The trial court's finding lists the numerous claims of law made by the petitioners during the trial (Record, pp. 420-431), many of which they pursued on appeal in the court below. Many of such claims purport to raise federal questions, and will undoubtedly be the subject of a further petition for certiorari after final adjudication of the matter below.

Since the decision below is clearly not final, the petition should be denied.

B. Some Of The Claimed Federal Questions Were Not Raised Below.

Parts (b) and (c) of defendants' claimed federal question (Petition, p. 2) deal with the relationship of exemplary damages to compensatory damages and with the amount of exemplary damages. As petitioners' Motion for Reargument in the court below indicates, (pp. 16-21 *infra*), these issues were never raised prior to the Motion for Reargument. Moreover in that motion they were discussed exclusively in terms of state law, although there was a passing reference to "federal law" and *"Linn* v. *Plant Guards,* 383 U.S. 53, 64" (p. 18 *infra*) and to "due process of law"[4] (p. 19 *infra*). Such references were insufficient to meet the requirement of 28 U.S.C. § 1257(3) that federal questions be "specifically set up or claimed."

[4] Connecticut's Constitution also contains a "due process" clause. Conn. Const., Art. I, Sec. 8.

C. The Claimed Questions Are Not Presented.

1. The claim re motivation for the suits was expressly rejected by the courts below.

The Superior Court expressly found in its Finding 778:

> "At no time from the period of the strike to the institution of these actions or thereafter did plaintiff waive its claim for damages, nor condone the unlawful acts of the defendants, nor use these cases or the threat thereof to induce the defendants to withdraw their claims in pending litigation, and plaintiff is not estopped to assert the claims made in these cases." (Record, p. 312)

Defendants assigned the making of Finding 778 as error (Record, p. 432). The Connecticut Supreme Court said:

> "The Court's finding, embraced in 866 numbered paragraphs covering 247 printed pages of the record is the subject of a massive attack by the defendants. It would prolong this opinion beyond all reason to discuss the errors assigned in the finding. Suffice it to say that they have been carefully examined and that no correction which would have a material bearing on the decisive issues is required." (Appendix, p. 67a)

In view of this finding, the question attempted to be presented by petitioners is not present in this case.

2. The Petition incorrectly represents the status of the record re compensatory damages.

Defendants' assertion that plaintiff "has obtained an award of about $300,000 of punitive damages without establishing a penny of actual damages" (Petition, p. 16) is a blatant misrepresentation. The court below said:

> "Each of the actions at issue here sought damages caused by the defendants' 'wilful and malicious' tor-

tious conduct. Clearly enough the defendants had the full right to stage a strike but they had no right to participate, as the evidence established that they did, in violent and unlawful acts at the gates of and on the premises of the plaintiff's several plants. Those acts occurred from June 8 to August 8 and 9, 1960. Their effect was to reduce the number of employees who would normally have been expected to report for work and this caused substantial loss to the plaintiff." (Appendix, p. 86a)

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"The court found that the plaintiff had sustained substantial damage, but, as we have stated, the amount thereof must be recomputed. . . ." (Appendix, p. 91a)

As the court below explained:

"The trial court first computed the monetary value of the total damages sustained by the plaintiff because of its being deprived of a portion of its productive labor force at the Pratt & Whitney Division plants and at the Hamilton Standard Division plants. The figures arrived at were based primarily on two elements: (1) excessive manufacturing costs due to the diminution of the labor force, and (2) unabsorbed fixed overhead expenses, referred to as 'wasted overhead', due to diminution of the labor force." (Appendix, pp. 82a-83a)

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"Having arrived at a figure representing the value of the total strike damage sustained by the plaintiff due to deprivation of a portion of its productive labor force, the court next proceeded to determine the portion of this figure which represented the loss directly due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which had occurred." (Appendix, p. 84a)

The trial court found that the excessive manufacturing costs at the Pratt & Whitney Division were $1,208,352 and at the Hamilton Standard Division were $205,017 (Findings 713, 729, Record, pp. 302, 304) and those Findings were approved (Appendix, pp. 67a, 83a). It also found that the "wasted overhead" at the Pratt & Whitney Division was $7,171,632 and at the Hamilton Standard Division was $3,308,499 (Findings 719, 731, Record pp. 302-304), and those Findings were also approved, except that the Connecticut Supreme Court held that upon retrial credit must be given for overtime hours worked during the strike (Appendix, pp. 67a, 83a).

The trial court also found the percentages of absent bargaining unit employees who were absent because of defendants' tortious activities (Findings 653-656, 658-659, Record, pp. 293-294). A result of the Connecticut Supreme Court's decision is that those percentages must be redetermined upon retrial so as to exclude absences because of tortious activities away from the plant (Appendix, p. 87a). The remand by the Connecticut Supreme Court also was based on the fact that the trial court, in its computation of damages, awarded no damages for the first three weeks of the strike at the Pratt & Whitney Division and the first six weeks at the Hamilton Standard Division (Findings 742, 743, Record, pp. 307-308; see also Appendix, p. 64a). Accordingly, the Connecticut Supreme Court directed that on remand plaintiff is to be awarded damages for those periods (Appendix, p. 91a).

It is obvious from the above discussion that plaintiff has already established that it suffered substantial damages by reason of defendants' tortious conduct during the strike, and that all that remains to be done upon remand is to make the corrections directed by the Connecticut Supreme Court.

D. No Federal Question Of Substance Is Presented.

1. Awards of exemplary damages have been upheld in other court cases arising out of strikes.

To the extent that there exists any federal question with respect to the award of exemplary damages, it has already been decided by this Court.

In *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656 (1954), this Court affirmed a judgment by a Virginia court in a comparable tort action against a union including an award of $100,000 for punitive damages, relying on a detailed analysis of the legislative history of the Labor Management Relations Act as displaying an absence of intent by Congress to preclude such power to the States. Subsequently, in *United Auto Workers* v. *Russell*, 356 U.S. 634 (1958), this Court had before it an award of $10,000 including punitive damages by an Alabama jury to an employee prevented by tortious acts of a union from getting to his employment for a period of about five weeks. Citing its decision in *Laburnum* this Court affirmed the judgment with the following comments (356 U.S. at 646):

> "Punitive damages constitute a well-settled form of relief under the law of Alabama, when there is a willful and malicious wrong. . . . To the extent that such relief is penal in its nature, it is all the more clearly not granted to the Board by the Federal Acts. . . . The power to impose punitive sanctions is within the jurisdiction of the state courts but not within that of the Board. . . ."

While the jury award including $100,000 of punitive damages involved in *United Mine Workers* v. *Gibbs*, 383 U.S.

715, 720 (1966), was reversed, there is no indication in such opinion that had liability been properly established an award of punitive damages as permitted by Tennessee law would have been disturbed. To the contrary, it appears that the petitioning union did not even challenge the propriety of some punitive damages under such circumstances but only challenged the amount thereof (Id. at 721, footnote 6).

Linn v. *Plant Guard Workers,* 383 U.S. 53 (1966), upon which petitioners rely (Petition, pp. 16, 17), in no way changes the rule or raises any question here. It is clear that this Court's holding that "the defamed party must establish that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages" (383 U.S. at 66), is only a necessary extension of the holding that a defamed plaintiff must prove actual harm in order to recover compensatory damages (383 U.S. at 65), and that both holdings are a result of the "*per se*" rule, peculiar to defamation actions, that permits recovery without proof of actual harm. (383 U.S. at 58, 64). Not only does the *Linn* holding have no bearing on the award of exemplary damages in a suit for strike violence, but even if it did, plaintiff has already shown that it suffered "compensable harm."

2. The Connecticut rule re exemplary damages is not unreasonable.

In *Triangle Sheet Metal Works, Inc.* v. *Silver,* 154 Conn. 116 (1966), the basis for an award of exemplary damages under Connecticut law was recently described by the Connecticut Supreme Court as follows:

> "The flavor of the basic requirement to justify an award of punitive or exemplary damages has been repeatedly described in terms of wanton and mali-

> cious injury, evil nature and violence. . . . The Restatement declares that punitive damages may be awarded only for 'outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others.' Restatement, 4 Torts §908, comment (b)."

For many years the Connecticut rule with respect to the computation of punitive damages, as summarized in *Maisenbacker* v. *Society Concordia,* 71 Conn. 369, 378 (1899), has been as follows:

> "The expenses of litigation are not an element of the damages termed in law actual or compensatory damages, 'they are not the natural and proximate consequence of the wrongful act,' and they can only be considered by the jury in those cases in which exemplary damages may be awarded. . . . Such expenses in excess of taxable costs, in cases in which they may be considered, limit the amount of punitive damages which can be awarded. . . ."

In *Chykirda* v. *Yanush,* 131 Conn. 565, 567 (1945), the Connecticut Supreme Court held:

> "The trial court gave the jury the correct rule: punitive damages consist of the expenses of the action that the plaintiff must meet, including the attorney's fee, from which 'would be deducted what are known as taxable costs.'"

Apparently Connecticut is the only state which limits exemplary damages to the expenses of litigation less taxable costs. *Note, Exemplary Damages in the Law of Torts,* 70 Harv. L. Rev. 517, 520 (1957); Annot., 30 A.L.R.3d 1443, 1453 (1970). In addition, the Connecticut rule requires proof of such expenses. *Vogel* v. *Sylvester,* 148 Conn. 666, 673 (1961). It is submitted that the Connecticut rule with

respect to exemplary damages is more favorable to defendants than the rules in other states, and that it raises no substantial federal question.

3. The Connecticut law was correctly applied.

The trial court specifically found that "the conduct of each of the defendants on the basis of which liability has been found to exist was comprised of wanton, malicious, violent and intentional acts, thereby justifying an award of exemplary or punitive damages." (Finding 744, Record, p. 308). In accordance with Connecticut law, the plaintiff presented evidence on its expenses of litigation.[5] The trial court made detailed findings as to such expenses (Findings 745-759, Record, pp. 308-310). The court below held that the findings were correct (Appendix, p. 67a) and that the award was proper (Appendix, p. 88a).

The award of exemplary damages covers only plaintiff's expenses through the end of the damages trial in the trial court (Findings 746-748, Record, p. 308), and does not cover the expenses of the appeal to the Connecticut Supreme Court, the proceedings in this Court, or the retrial below.

4. There is no conflict among courts on the issue.

Plaintiff knows of no conflict among counts concerning the award of exemplary damages in actions for violence during strikes, and defendants have referred to none in their petition. Moreover, the Connecticut rule limiting exemplary damages to the expenses of litigation less taxable costs is apparently unique; any ruling by this Court concerning exemplary damages in Connecticut would have little or no value as precedent elsewhere.

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[5] Some of such evidence is summarized in the Record at pages 402-407.

Conclusion

While petitioners justify the filing of their petition as an abundance of caution to avoid being charged with having waived their rights, a quick perusal of the record will demonstrate that this is but one example of the multitude of procedural devices they have employed to attempt to prevent this litigation from being brought to a conclusion. The Record shows some of their maneuvers in the trial court (Record, pp. 11, 24, 49, 91, 92). In addition, they brought an action seeking to enjoin the state court suits which was carried to this Court. *International Assn. of Machinists* v. *United Aircraft Corp.*, 56 L.R.R.M. 2389 (D.Conn. 1964), *aff'd* 333 F.2d 367 (2d Cir. 1964), *cert. den.* 379 U.S. 946 (1964). Obviously, many more maneuvers are to be expected before the judgments are ultimately final. It is now more than ten years since the tortious acts complained of occurred and petitioners have not been required to pay a penny of the damages that they caused. It is respectfully submitted that this unwarranted petition should be denied so that the litigation will be moved to a conclusion.

Respectfully submitted,

JOHN D. FASSETT,
Counsel for Respondent.

S. ROBERT JELLEY,
Of Counsel.

November 5, 1971

APPENDIX

STATE OF CONNECTICUT SUPREME COURT

HARTFORD COUNTY, OCTOBER TERM, 1969

6646

133884 UNITED AIRCRAFT CORPORATION

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS ET AL.

133885 UNITED AIRCRAFT CORPORATION

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS ET AL.

Defendants' Motion for Reargument

Defendants-appellants respectfully move this Court for an order granting reargument in this case. This Court's judgment raises two issues which were not passed below and which are not governed by any prior decisions of this Court:

(1) What relationship, if any, must an award of exemplary damages have to the amount recovered as compensatory damages?

(2) May exemplary damages be awarded in the full amount of expenses of litigation of issues with respect to which the plaintiff was unsuccessful, or with respect to which a new trial is directed?

Discussion

I. There is a wide split of authority throughout the United States respecting the relationship between the amount of compensatory damages awarded and the limit of an exemplary damages award. See *Annotation,* 17 A.L.R. 2d 527-550. The courts have followed one of three general approaches: (a) the amount of exemplary damages must bear a reasonable relation to the compensatory damages; (b) exemplary damages may be awarded only if some, or greater than nominal, compensatory damages are recovered by the plaintiff; or (c) exemplary damages are not dependent on the amount of compensatory damages.

This Court has never had occasion to decide which of these rules, or, indeed, some other rule, is Connecticut law. The issue is obviously one of general importance, and should not be decided without argument by adversaries on a record which squarely presents it.

That question was not ripe for argument prior to this Court's judgment herein, because exemplary damages was a fraction of the compensatory damages awarded below. With the latter award upset, the issue is not ripe for argument now. Indeed, whether that issue will arise hereafter in the present case depends on the outcome of the new trial which has been directed on compensatory damages. If plaintiff is unable to establish substantial damages at that trial, defendants should not be foreclosed from urging, in light of the reduced award, that the exemplary damages awarded on the basis of the prior compensatory damage award are, under the new award, excessive. "A fundamental requirement of due process is 'the opportunity to be heard'. *Grannis* v. *Ordean,* 234 U. S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo,* 380

U. S. 545, 552. Yet, if the present affirmance of the exemplary damage award stands, defendants will be denied the opportunity to urge this Court to reduce that award in light of the outcome of the new trial on compensatory damages. The effect would be to adopt, for purposes of the present cases, the minority rule (see 17 A.L.R. 2d at 529) that the amount of compensatory damages is irrelevant, although (1) this Court has never declared that to be Connecticut law; (2) defendants have not been heard on whether that should be the rule; (3) the result would be inconsistent with federal law, even on the narrowest reading of *Linn* v. *Plant Guards,* 383 U. S. 53, 64, distinguished in another context in this Court's opinion.

We submit since the result of a new damages trial obviously may be materially more favorable to defendants, no valid purpose can be served by thus pretermitting consideration of this issue.

II. The present award of exemplary damages includes substantial amounts for plaintiff's costs for proving damages, as to which this Court has now directed a new trial. This Court has never ruled on whether a plaintiff is entitled to receive its full litigation expense even though the original judgment was set aside on appeal, or the plaintiff was otherwise unsuccessful. This too, we submit is an issue of substance which should not be decided *sub silentio* against defendants. We urge the Court to hold that a plaintiff cannot recover for litigation expenses with respect to issues as to which it did not prevail. This is the principle followed by the federal courts in assessing attorney's fees recovered under § 4 of the Clayton Act. *Farmington Dowel Products Co.* v. *Forster Mfg. Co.,* 421 F.2d 61, 91-92 (C.A. 1) and cases cited id., at 92; *Bergjans Farm Dairy Co.* v. *Sanitary Milk Producers,* 241 F. Supp. 476, 489 (E. D. Mo.), aff'd, 368 F.2d 679 (C.A. 8). To require the defendant to pay the litigation expenses *of both sides,* on issues on which

defendant prevails, is so fundamentally unfair as to amount to a denial of due process of law. Moreover, placing the plaintiff in such a "heads I win, tails you lose" posture encourages exaggerated demands by plaintiffs, wherever an award of exemplary damages is assured or highly probable. As the First Circuit said in *Farmington*, "Were no discretion allowed to the court, a plaintiff could vastly increase the fee burden on a defendant by pursuing a plethora of insubstantial claims." 412 F.2d at 92. Particularly where, as here, the counsel fees and related costs involved are very substantial, and allocation presents no serious problem (since separate trials for liability and damages were held) defendant should not be required to bear plaintiff's total litigation expenses. Rather, the amount of those expenses properly chargeable to defendants should also be left open on remand.

III. We have thus far urged that reargument be granted, and that on reargument the award of exemplary damages be vacated for further consideration in light of the principles outlined herein. However, if the court should be of the opinion that revocation of the judgment is not warranted, we urge that reargument be granted and the original judgment modified to a limited extent; namely, that the affirmance of the award of exemplary damages be expressly subject to revision by further order of this Court when the case returns on appeal by either side after the new trial (or when the time of both sides to appeal has expired). This would not only preserve the issues raised herein for further consideration in light of subsequent developments; it would avoid a serious procedural problem which, even standing alone, would have prompted the present motion.

There is grave uncertainty whether the Court's present order on exemplary damages is a "final judgment," 28

U.S.C. § 1257, of which Supreme Court review must be sought *now* or *never*. On the basis of extensive research, and particularly in light of recent developments (*e.g., Local No. 438, etc.* v. *Curry*, 371 U. S. 542, 548-552; *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U. S. 386, 389, n. 4), it appears—though it is by no means clear—that for the purposes of review by the United States Supreme Court this Court's order *is* "final" in its present form.

We wish to make it entirely clear that we would prefer not to seek review by the United States Supreme Court at this time, but to seek review, if at all, only after all proceedings in this case in the courts of this state have been completed. But if the present posture of the exemplary damages award is unchanged, defendants will have no alternative to filing a Petition for Certiorari on the exemplary phase now, for a subsequent Petition addressed to that phase might be deemed untimely. See *Parker* v. *Illinois*, 333 U. S. 571; Stern and Gressman, *Supreme Court Practice*, 103 (4th ed., 1969). An order which makes clear that the entire judgment is subject to revision in this Court would relieve defendants of this dilemma, and would eliminate the burden of piecemeal application for and piecemeal review by the Supreme Court. Such an order would also hasten the new trial which this Court has directed, inasmuch as such trial would not be delayed by interim Supreme Court proceedings, and would thus serve the interests of the parties and sound judicial administration.

Conclusion

For the foregoing reasons it is respectfully submitted that this Court, order reargument on the questions herein presented and, after reargument, vacate its affirmance of

the exemplary damage award, or modify said affirmance by expressly reserving its jurisdiction to alter the exemplary damage award on subsequent timely appeal from the new judgment on remand.

Respectfully submitted,

NORMAN ZOLOT,
Counsel for Defendants.

May 7, 1971

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-495

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL.,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

REPLY FOR PETITIONERS

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REPLY FOR PETITIONERS

If respondent had confined its Brief in Opposition (Opp.) to the *merits* of the Petition (Pet.), no reply would be necessary. Contrary to the Company's assertion (Opp. p. 8), question (a) is squarely presented, for when the court below determined that the state courts had jurisdiction, it did so on the view that *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, was inapposite (A. 68, quoted at Pet. p. 14), rather than by accepting the trial court finding on which

respondent relies.[1] And respondent is simply engaged in wishful thinking when it seeks to avoid consideration of questions (b) and (c) (Opp. pp. 8-10) by claiming "that plaintiff has already established that it suffered substantial damages by reason of defendants' tortious conduct during the strike" (*id.* p. 10); *no* court has determined that respondent suffered *any* damage in consequence of those tortious acts which the state Supreme Court held attributable to the unions, and on the basis of which it sustained the punitive damage award. Thus, whatever injury respondent may ultimately show,[2] *Linn* establishes (even on respondent's narrowing of its holding to cases where a state rule allows "recovery without proof of actual harm" (Opp. p. 12)) that the present punitive damage award is contrary to federal law. Finally, the importance of the case is not affected by the circumstance that this award was made under the rubric "punitive damages" in a suit arising under Connecticut law (Opp. p. 14). The impact on the defense of federal rights is identical to that in the cases cited at Pet. pp. 19-20; since federal law declares the outer limits of liability for tortious strike misconduct (*Mine Workers* v. *Gibbs,* 383 U.S. 715), the

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[1] The trial court's Finding 778, that the suits were not used to restrain the exercise of federal rights, was not approved; rather, it was left standing because its "correction" was deemed not to "have a material bearing on the case." (A. 67).

[2] In order to recover damages on remand, the company will be required to prove that it was damaged by involuntary absences during the first five days of the strike or as a result of the minor and sporadic incidents in front of the plant which the trial court found after the injunctions were entered. And even if plaintiff were to establish some damages on that basis, these would be subject to a "credit for overtime work[ed] during the strike." (Opp. p. 5; see A. 83.)

unions' defenses below were federal in origin, and were so presented below.

What does necessitate this reply is respondent's baseless charge that the Petition for Certiorari was filed as an instrument of delay (Opp. p. 15). The filing of the Petition in no way prevents or delays "this litigation from being brought to a conclusion." (*Id.*) Respondent's assertion that "[a] further trial on the limited issues with respect to damages as specified by the Connecticut Supreme Court awaits disposition of this petition" (Opp. p. 5) is simply false. Whether or not certiorari is granted, those proceedings can go forward without regard to the present proceedings. That respondent knows this full well is shown by respondent's own insistence that the unions not notice the state court case for trial until the Petition for Certiorari is filed (see Appendix A, *infra*) and by the proceedings in the Superior Court after the mandate of the state Supreme Court issued.[3]

To give color to its claim of dilatoriness, respondent characterizes as "maneuvers in the trial court" the motions by which defendants raised the jurisdiction issue in the trial court. Of course, if these motions—proper under state procedure—had not been made, respondent would now contend that the issue was not

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[3]After the Motion for Reargument was denied by the Supreme Court of Connecticut, the mandate went to the trial court for the remand proceedings. That court held a calendar call at which the Company stated it was not ready for trial, a position in which defendant unions joined, neither party having anticipated the unusual disposition of the case by the Connecticut Supreme Court. It was determined that the case would be placed on the calendar for trial at the request of either party. It was never suggested that the proceedings in this Court on the punitive damage issue would stay the proceedings in the trial court.

preserved—an objection which respondent actually does advance with respect to questions (b) and (c).[4]

In sum, respondent's felt necessity to prejudice consideration of the Petition for Certiorari by misstating its purpose (Opp. p. 15) and effect (Opp. p. 5) betrays counsel's wholly justified apprehension that the Petition could not successfully be opposed on the merits. Accordingly, it is plain that if the judgment below is final, the Petition for Certiorari should be granted.

Respectfully submitted,

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[4] The Motion for Reargument (Opp. pp. 16-21) is itself the best demonstration that questions (b) and (c) were clearly and concisely raised below. Of course, a petition for rehearing would be an imposition on the Court if it developed any issue in the fullness appropriate for a brief on the merits; but, contrary to Opp. p. 7, it is well settled that such a petition is a timely occasion for raising a federal question which is created by an unexpected decision of the state's highest court. See e.g., *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill*, 281 U.S. 673, 677-8. That the disposition of this case by the state Supreme Court was unexpected is shown at Pet. pp. 8-9 and is not disputed by respondent.

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APPENDIX A

LAW OFFICES OF
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TELEPHONE 288-3591

July 30, 1971

S. Robert Jelley, Esq.
Wiggin & Dana
205 Church Street
New Haven, Connecticut

Re: United Aircraft Corp. v. I.A.M.

Dear Mr. Jelley:

This is to confirm our understanding with respect to the I.A.M.'s request for an extension of time within which to file a petition for certiorari with the United States Supreme Court in connection with the two cases currently waiting retrial on damages in the Superior Court in and for the County of Hartford.

We agreed that the time for the filing of the petition may be extended for sixty days from the required date but that until the petition is actually filed neither party would have the matter set down for trial.

I trust this is in line with your understanding.

Thank you for your cooperation and courtesy in this matter.

Sincerely yours,

NORMAN ZOLOT
Norman Zolot

cc: Mozart Ratner, Esq.

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C.R.